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NO. 83-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LARON WILLIAMS,

Petitioner,

VS.

STATE OF TENNESSEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TENNESSEE

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Petitioner, Laron Williams, prays that a Writ of Certiorari issue to review the judgment of the Tennessee Supreme Court.

QUESTIONS PRESENTED FOR REIVEW

I.

Whether the effective assistance of counsel mandate of the Sixth Amendment and Equal Protection and Due Process clauses of the Fourteenth Amendment prohibit the State's denial of a timely presented defense request for funds to secure an expert witness to assist appointed

counsel of an indigent defendant in a capital case in preparing an effective defense and in conducting effective cross examination of the F.B.I. expert witness called by State?

II.

Whether the improper argument of the prosecutor, in the sentencing phase of the death penalty trial, consisting of informing the jury that defendant had previously received the death penalty in another case where he was guilty of "murdering a police officer in the line of duty" as the defendant "took a gun and blew his brains out" and further that "prior to that he was found guilty. . . of the murder of a young lady" violates the Due Process clause of the Fourteenth Amendment to such a degree that a subsequently imposed death sentence must be vacated?

LIST OF ALL PARTIES

All parties involved in these proceedings both in the Court below and this Court appear in the caption of the case in this Court.

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The opinion of the Tennessee Supreme Court is reported in State v. Williams, 657 S.W. 2nd 405, (Tenn. 1983) and is attached hereto as Appendix A.

JURISDICTION

The Supreme Court of Tennessee issued the opinion and judgment in this case on August 29, 1983. Petitioner timely filed a petition for rehearing which was denied on October 3, 1983. Petitioner asserted below and asserts here a deprivation of his rights as secured under the United States Constitution. This Court's jurisdiction is therefore invoked pursuant to 28 U.S.C. §1257(3).

An extension of time until January 1, 1984, to file this Petition was granted by Justice O'Connor on November 23, 1983. An application to proceed in forma pauperis has previously been presented to this Court pursuant to Title 28, U.S.C., §1915, and Rule 46 of the Rules of this Court. The Tennessee Supreme Court has granted a Stay of Execution pending action of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Sixth Amendment to the Constitution of the United States, which provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . and to have the assistance of counsel for his defense.

and the Eighth Amendment to the Constitution of the United States, which provides in relevant part:

> Nor cruel and unusual punishments inflicted.

and the Fourteenth Amendment to the Constitution of the United States, which provides in relevant part:

> No state shall . . . deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

2. This case also involves the provisions of Tennessee Code Annotated §39-2-203 which sets forth the Tennessee statutes dealing with the imposition of the death penalty in an appropriate case. This statute is contained herein as Appendix E.

STATEMENT OF THE CASE

On June 30, 1981, a Madison County, Tennessee, Grand Jury indicted petitioner for the first degree murder of Father John Jay Jackson who was found dead inside the rectory of Saint Mary's Catholic Church in Jackson, Tennessee. Williams was also charged with burglary as an outgrowth of the same situation and willfully employing a firearm while committing a felony. On various dates thereafter motions were filed by the petitioner and the State of Tennessee including a motion to be granted funds to hire an expert witness on the issue of fiber identification.

Venue was changed to Maury County, Tennessee. The trial began on December 8, 1981, and concluded on December 14, 1981, with the jury returning verdicts of guilty as to first degree murder and burglary. The petitioner was sentenced to not less than ten nor more

than fifteen years in the State Penitentiary on the burglary charge. On December 14, 1983, at the sentencing hearing on the first degree murder conviction, the petitioner was sentenced to death.

As set forth elsewhere in this petition the Supreme Court of Tennessee affirmed petitioner's convictions and sentences in the judgment now before this Court.

Reference To Parties

References to the Record of Evidence will be designated by the abbreviation (R.). Reference to the technical record will be designated by the abbreviation (T). References to the supplemental record on the Motion to Provide Funds will be designated by the abbreviation (Supp. R.). References to exhibits will be designated by the abbreviation "ex.".

Statement Of Relevant Facts

The facts necessary to place in their setting the questions now raised can be briefly stated:

The victim in this case, Father John Jay Jackson, was found dead inside the rectory of Saint Mary's Catholic Church in Jackson, Tennessee on Friday, May 15, 1981. (R. 76-77). There appeared to have been a struggle in the room where the victim was found. (R. 81). A physician was of the opinion that the cause of death was a gun shot wound to the victim's right upper back. (R. 373). The petitioner, Laron Williams was arrested on May 17, 1981 at a restaurant in Jackson, Tennessee which was a short distance from his motel room. (R. 330-331). Subsequent to being advised of his rights, Williams was taken to the Jackson City Police Department where his shirt, pants, jacket, shoes and cap were taken from him. At this time, he was also questioned and gave a statement to the authorities that was typed, but

was not ultimately signed by the petitioner. (R. 604-605).

On November 16, 1981, the deceased was exhumed pursuant to a Court order and hair samples removed by a member of the Jackson Police Department. These samples came from five places on the head of the deceased and were sent to the F.B.I. Lab in Washington, D.C. These hair samples were compared to other hair samples taken from the clothing of the deceased and the petitioner's clothing. (R. 444-448).

A .38 caliber pistol allegedly sold by the petitioner to a Jackson citizen was turned over to the Police Department and tested for fingerprints and ballistics. No identifiable fingerprints were found on the weapon which would link Williams to the pistol. (R. 241). There was subsequent testimony from the Memphis Police Department that the .38 caliber pistol previously mentioned and introduced as ex. 3 at the trial belonged to the Memphis Police Department and was out of their possession for a period of time after May 12, 1981. (R. 73).

Testimony was further introduced wherein ex. 3 was identified by Mr. Evan Chapman as being the pistol that he bought from the petitioner Williams for $30.00 down on the same Friday night that the murder occurred. (R. 304-307).

Tennessee Bureau of Investigation agent Patrick Garland of the T.B.I. Crime Lab testified that a bullet taken from the wall of the murder scene and a bullet taken from the body of the deceased matched each other, and also matched a test fired bullet by a preponderance of identifying characteristics and all were in his opinion fired from ex. 3. (R. 408-420).

Lieutenant Barney Crews Jr. of the Jackson Police Department testified as to the location of footprints under a carport which angled towards the church and further that footprints found near a

dumpster led east towards a major highway bypass. These prints were not however compared to any shoes including those worn by the petitioner at the time of his arrest. (R. 86-94). Specifically, the authorities took tennis shoes from Williams when he was arrested and there was testimony that these shoes did not match the prints that had previously been found. (R. 165).

Certain fingerprint evidence was introduced during the trial, but fingerprints recovered from ex. 3, the alleged murder weapon, did not match the petitioner's fingerprints. (R. 241). There was however an unidentified fingerprint on ex. 3 and also unidentified prints found on the door at the scene of the crime. These two unidentified prints were not compared to see if they matched each other. (R. 474-475, 490-491). Dr. Thomas K. Ballard, the county coroner, estimated the time of death at between 8:00 and 9:00 p.m. on the evening of May 14, 1981. (R. 383). Ed Bendoski, a resident of Saint Mary's Manor, a home for retired persons located next to the rectory, testified that at 8:22 p.m. on the evening of May 14 he and his wife looked outside of the window of an eighth floor lounge at the Manor which faces the highway. (R. 117). He testified it was well lit and that he saw a black male around the dumpster. (R. 118-119). He specifically testified that at the time he saw the man at the dumpster it was dusk, but that the area surrounding the dumpster was well lighted and was illuminated at that time. As Bendoski stood 50 to 55 feet from the ground with the dumpster being 50 to 60 feet away from the building he observed the man at the dumpster at an angle. At the trial Bendoski positively identified the petitioner as the man he saw that evening. (R. 120). He further admitted however he had never identified the petitioner before the trial and recognized him only

when he saw him sitting in the Courtroom at the trial some seven months later. (R. 122).

He further advised that he had been interviewed by police officers the next day and testified that he told them he could identify the man. (R. 131). The Police Department never brought him any photographs of the defendant or anyone else to look at (R. 121). He further testified he had never seen the petitioner's photograph in the newspaper, nor had he seen him in person or on television. (R. 121). The interviewing officer, Sgt. Roy Towater, denied having been told by Mr. Bendoski that he could identify the man he saw near the dumpster. (R. 395).

Lieutenant Bobby Holt testified that he took a statement from the petitioner who denied in his statement being involved in a crime. (R. 601).

Agent Mike Malone of the Federal Bureau of Investigation was qualified as an expert witness and allowed to testify. (R. 516). He testified that he examined the hair samples submitted to him by the Jackson Police Department and other hair samples which he obtained from the clothing of the deceased and the petitioner. (R. 527-530). Upon comparison, he stated that the hair sample removed from the victim's head, and the hair samples found on petitioner's jacket were probably from the same source. (R. 541). He stated that the hair samples found on Williams' jacket were forcibly removed but he admitted that he could not say how the hair samples were forcibly removed. (R. 542-547). He further testified that rarely do two people have the same hair characteristics and that it was possible, although not likely, that two persons hair could be the same. (R. 551). He did not find any negro hairs on the victims clothing submitted

to him. The petitioner is a negro. (R. 554).

Laron Williams presented alibi witnesses who basically testified they were with him on the evening of the crime from approximately 4:00 p.m. untill approximately 10:30 p.m. (R. 616). The witnesses and the petitioner played pool, drank and danced at the Carousel Club and at Chat's Place. An employee of Chat's Place named Charlie Harris testified that he was working there the night the crime was committed. (R. 652). His best estimate of the time that he saw the petitioner on the evening of the crime was between 8:00 and 9:00 p.m. (R. 656). He testified further he saw the petitioner shortly before the man comes to set up the "platter party" which is usually 8:30 to 9:00 p.m. (R. 656). At trial the state read a statement by the petitioner denying any knowledge of the crime or the gun when telling of his activities on May 14. (R. 579). The petitioner's statement to the police was inconsistent with the testimony of his alibi witness. Williams did not testify in his own behalf at the trial.

Roderick Elmore, an inmate at the Shelby County Jail awaiting trial on a charge of armed robbery, came into contact with the petitioner during their incarceration in June of 1981. At that time Elmore testified he overheard portions of a conversation wherein Williams stated that he had been driven to Jackson, Tennessee by his girlfriend and was on the grounds of the rectory and that he had sold a pistol to someone in Jackson. (R. 559 & 561). Elmore, who could not hear the entire conversation did not hear Williams state when he was at the rectory or say anything about killing the Priest. (R. 566).

This witness testified that no deals were made in order to secure his testimony at the trial of the petitioner. (R.). Although he did not see the petitioner when he spoke at the jail he testified he was positive that the voice was that of the petitioner. (R.).

The only proof introduced at the sentencing hearing were two certified copies of Williams' convictions for first degree murder in Shelby County and second degree murder in Davidson County. These documents were stipulated to by the State and defense counsel. These documents are included as Appendix C.

A satisfactory summary of the evidence, for the purpose of this petition, does appear in the Tennessee Supreme Court's Opinion which is attached as Appendix A.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

The issue as pertains to the denial of the requested funds for an expert witness was first raised by the petitioners' motion when his counsel were informed of the States intention to call an expert witness from the F.B.I. lab. The transcript of the hearing on that motion is included as Appendix B. The issue was duly raised by means of the Motion for a New Trial.

The Tennessee Supreme Court rejected petitioners Sixth Amendment claim holding that:

> The United States Supreme Court, in United States ex rel. Smith v. Baldi, 344 U.S. 561, (1953), held that a state is under no federal constitutional obligation to provide expert pre-trial assistance to an indigent defendant. The defendant, in Baldi, requested that the trial court's refusal to do so, the Court stated, 'Psychiatrists testified. That sufficies.' 344 U.S. at 568.

> We have held this state's constitution preserves no such right. Graham v. State, 547 S.W.2d 531 (Tenn. 1977). Although the Defendant urge(s) this Court to adopt a rule of law allowing an indigent defendant funds for expert assistance, we decline to do so. Essentially this is a matter that addresses itself to the judgment and discretion of the legislature. Thus far it has not seen fit to provide such services to indigent defendants. Graham, 547 S.W.2d at 536.
>
> State v. Williams, 657 S.W.2d at 413.

The issue as pertains to the improper closing argument of the State, as outlined earlier and presented in the second question for review, was initially raised in the petitioner's motion for a new trial.

The Tennessee Supreme Court rejected Petitioners claim on this issue, even though finding the state's argument improper. The court stated:

> On review it is not for this Court to speculate about the thought processes of the jury . . . It is only after finding at least one of the aggravating circumstances that the death penalty may be given. In the present case the Defendant presented no evidence of mitigating circumstances, and the aggravating circumstances were strong.
>
> State v. Williams, 657 S.W.2d at 414

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

I.

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER SIXTH AMENDMENT AND DUE PROCESS PROTECTIONS PROHIBIT A DENIAL OF AN INDIGENT'S REQUEST TO SECURE AN EXPERT WITNESS TO ASSIST APPOINTED COUNSEL IN A CAPITAL CASE IN PREPARING AN EFFECTIVE DEFENSE WHEN THE STATE CHOOSES TO PRESENT EXPERT TESTIMONY ON A TECHNICAL AND CRUCIAL ISSUE.

In order to place this argument in proper focus it should be pointed out that the victim, Father John Jay Jackson, was found dead in Jackson, Tennessee, on May 14, 1981. (R. 76-77). On May 15, 1981 an autopsy was performed in Memphis, Tennessee by the Shelby County Medical Examiner. (R. 269). The record at trial reflects that an extensive and exhaustive investigation was carried out in this case involving two sets of ballistics tests and investigation as to other types of circumstantial and scientific evidence, such as fingerprint analysis and footprint analysis as set forth in the Statement of the Case.

Laron Williams was indicted on June 30, 1981, upon an indictment listing approximately 42 witnesses for the state. (T 4). This document listing the witnessess, along with the State's response to the petitioner's discovery motions gave defense counsel a reasonable opportunity to investigate the facts and prepare a defense. It is clear from the record that the defense counsel were operating as appointed counsel without the assistance of any private investigators or other support personnel. Although handicapped in this manner, defense counsel did have a reasonable length of time within which to investigate the witnesses and to research and study the methods used by the States' criminal and forensic experts. The method used by the state to establish forensic evidence against the petitioner at his

trial were fairly conventional methods familiar to most experienced defense attorneys. Ballistics and fingerprint experts were often used in trials in Tennessee and their theories are relatively familiar.

Some six months after the original investigation began the District Attorney requested that the Circuit Judge order an exhumation of the body of the deceased in order to obtain hair samples. This request was granted and an exhumation was carried out in Memphis, Tennessee on November 16, 1981. (R. 444). Using the full resources available to the State the District Attorney's Office had the hair samples submitted to Washington, D. C. where tests were performed by the Federal Bureau of Investigation. (R. 527). On November 24, 1981, the District Attorney orally notified defense counsel that the results were positive in that the F.B.I.'s "hair analysis" expert had been able to link certain hair removed from the exhumed body to certain hair found on the coat of the petitioner, Laron Williams, at the time of his arrest. This was an extremely important and vital piece of evidence which the District Attorney had been able to obtain at the last minute only because of the enormous and vast resources possessed by the State and Federal Governments.

There can be no dispute but that this was a critical piece of evidence. The Tennessee Supreme Court in their decision in State v. Williams, 657 S.W. 2d 405, (Tenn. 1983) noted at page 413:

> We agree with the State that the testimony under attack here (hair analysis) was highly probative to establish the fact of the Defendant's identity as the perpetrator of the crime.

A motion was filed by defense counsel immediately requesting funds to be provided to the defense to enable them to obtain expert assistance concerning this evidence. (Supp. R. 17). This motion was

filed by the defense counsel on November 25, 1981 upon learning of this evidence. Since this evidence was brought to the forefront shortly before the trial was to begin, it was necessary for the defense and the state to argue the motion by telephone which was done on December 3, 1981, five days before the trial was to begin. The transcipt of this oral conference is included as Appendix B.

The petitioner's request for funds for expert assistance was vigorously opposed by the State and the Trial Judge overruled the petitioner's motion stating that he would reconsider the motion if defendant could obtain an expert and be ready to go to trial prior to the trial date of December 8, 1981. (Supp. R. 13). This was an impossible task for appointed counsel without funds.

It is the position of the petitioner that the Court's failure to grant him funds for expert assistance on the hair analysis issue denied him the right of effective assistance of counsel and also denied him due process and equal protection under the law. The Sixth Amendment guarantees of assistance of counsel clearly mandate effective assistance of counsel.

This Court is clearly familiar with the numerous decision interpreting the provisions of the Sixth Amendment in the context of indigent defendants. From the early decision in Powell v. Alabama, 887 U.S. 45 (1932) until the present there has been an expanded belief in the right of a meaningful defense.

In Griffin v. Illinois, 351 U.S. 12 (1956), this Court held that a State must furnish a free transcript of his criminal trial to an indigent defendant if he needs a record for his appeal.

Justice Black made the assertion in that case that is equally true today that "there can be no equal justice where the kind of trial

a man gets depends on the amount of money he has". 351 U.S. at 19. Since Griffin involved the kind of appeal, not the kind of trial, Justice Black's statement amounted to dictum. Cases subsequent to Griffin in the pretrial context, have given effect to his observation. In Roberts v. LaVallee, 389 U.S. 40 (1967), the Supreme Court required New York to provide an indigent defendant with a free record of his preliminary hearing which contained testimony relevant to trial. The Court stated that:

> differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution. 389 U.S. at 42.

Similarily in Britt v. North Carolina, 404 U.S. 226 (1971), the Court described the Griffin principal as a command that required Courts to

> provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners". 404 U.S. at 227.

Admittedly it is impossible to make a blanket statement that will cover every type of contingency. For that reason a number of Courts follow Judge Wisdom's concuring view in U.S. v. Theriault, 440 F. 2d 713 (5th. Cir. 1971), cert. denied 411 U.S. 984 (1973). He concluded that a trial Court should authorize assistance

> when the attorney makes a reasonable request in circumstances in which he would independantly engage such services if his client had the financial means to support the defense. 440 F. 2d at 717.

Judge Wisdom reasoned the consitutional considerations of due process and equal protection compelled this minimal threshold for granting assistance under the statute, so that the minimal barrier to

requests for expert services placed indigents in virtual equality with "those who possess the means to protect their rights" and enhances adversarial fairness by assuring poor persons "reasonably adequate defense aids to offset the government's far greater resources and far more extensive prosecutorial aids". 440 F2d at 716-717.

A number of jurisdictions recognize that where the accused lacks the funds necessary to present a defense on a material issue, that equal protection compels the state to furnish that defendant assistance beyond the mere providing of counsel. The Ninth Circuit, for example, has recognized the right, under equal protection, of an indigent defendent represented by appointed counsel in a state trial to investigative services equivalent to those available to the public defender. Mason v. Arizona, 405 U.S. 1345 (9th Cir. 1974), cert. denied 420 U.S. 936 (1975). The denial of state funded assistance to indigent defendants clearly falls within the scope of the Due Process clause. As Judge Bazelon stated in Rollerson v. United States, 353 F2d 269 (D.C. Cir. 1964) "Where the community fails to supply for those who can not, the effort and resources required for an adequate exploration of the issue, the trial becomes a facade of regularity for partial justice." 353 F2d at 276. Obviously this concern with assuring indigents a meaningfull opportunity to present their case applies with equal if not greater force during the course of the trial, than on appeal.

The decision of this Court in Ross v. Moffitt, 417 U.S. 600, (1974) provides some insight as to the error of the Tennessee Supreme Court even though the Ross decision deals primarily with a discretionary appeal. Speaking for the majority, Justice Rehnquist made the observation that "at the trial stage of a criminal proceeding,

the right of an indigent defendant to counsel is fundamental and binding upon the state by virtue of the Sixth and Fourteenth Amendments. 417 U.S. at 610. While recognizing the undisputed fact that the Fourteenth Amendment did not require absolute equality of treatment Justice Rehnquist did observe that;

> it does require that the state appellate system be 'free of unreasoned distinctions,' Rinaldi v. Yeager, 384 U.S. 305, (1966), and that indigents have an adequate opportunity to present their claims fairly within the adversary system. 417 U.S. at 612.

It is clear within the context of the Ross decision that these rights apply with even more force at trial than they would at an appellate proceeding.

Speaking again for the majority, in United States vs. MacCollom, 426 U.S. 317, at 324 (1976), Justice Rehnquist seemed to announce the general prevailing thought running through these cases, by again referring to the Ross decision.

> In the context of a criminal proceeding they require only 'an adequate opportunity to present one's claim fairly.'

The petitioner submits that these previous basic holdings are fundamental in showing how far the Tennessee Supreme Court has strayed from their spirit. It is also compelling to look at other indications showing that if providing an attorney to an indigent is to be meaningful it is essential that the attorney render effective legal assistance. During the recent years most state and federal courts have moved to a higher standard for required effectiveness, expressed for example as "reasonably competent assistance of counsel" or "within the range of competency expected of an attorney in criminal cases." Under these higher standards the burden placed on defense counsel is even greater and an appellate review of the effectiveness of counsel

is more far reaching.

The American Bar Association has declared that the objective of providing counsel "should be to assure that quality legal representation is afforded" ABA, Standards For Criminal Justice, Providing Defense Services, Standard 5-1.1 (1980). To this end the ABA has urged that criminal lawyers not only provide effective assistance of counsel, but stresses the availability of adequate support services including experts as being necessary often to provide this reasonable representation. The previously mentioned ABA Standard, set forth at 5-1.4, specifically addresses about support services and training.

The Standard itself indicates

> These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process.

The Commentary specfically observes that:

> Quality legal representation cannot be rendered either by defenders or by assigned counsel unless the lawyers have available for their use adequate supporting services. These include inter alia expert witnesses capable of testifying at trial and at other proceedings. . . The quality of representation at trial, for example, may be excellent and yet valueless to the defendant if the defense requires the assistance of a psychiatrist or hand writing expert and no such services are available. Commentary to Standard - Providing Defense Services at 5-1.4.

The petitioner herein submits that not only is investigation at pre-trial stages necessary to protect a defendant's right to meaningful representation, but also the investigations necessary to protect a defendant's right of confrontation by counsels' meeting the testimony of adverse witnesses with an informed cross examination. As observed by the United States District Court for the Northern

District of West Virginia "the Sixth Amendment right to counsel would be a hollow one indeed if the counsel appointed were not given the tools necessary to prepare a meaningful defense." Davis v. Coiner, 356 F. Supp. 695, (N.D. W. VA. 1973), at 698.

The source of the language seems to have been that of former Justice Arthur Goldberg:

> The right to counsel at trial and on appeal may provide hollow if appointed counsel is not armed with tools of advocacy investigatory resources, expert witnesses, subpoena, trial transcript. If the right to counsel is to be given meaningful content, and if our adversary process is to retain its vitality, the appointed attorney, like the retained attorney, must be permitted to preform as a advocate. . . If representation is to be as effective for poor as for rich, it follows that services necessary to make this right effective must be supplied at government expense to those unable to afford them.
>
> Goldberg, Equality and Governmental Action, Fifth Annual James Madison Lecture, 39 N.Y. U.L. Rev. 202 (1964) at p. 222.

The Tennessee Supreme Court gives only glancing consideration to this important concept in the decision in the instant case. Relying upon the Supreme Court decision of United States ex rel Smith v. Baldi, 344 U.S. 561, (1953) the Tennessee Supreme Court observes in Graham v. State, 547 S.W.2d 53 (1977) that the lower court's refusal to appoint pre-trial psychiatric assistance to an indigent defendant was permissible under the logic of Baldi. . . "psychiatrist testified. That suffices." 344 U.S. at 568. The numerous decisions handed down since 1953 by this Court certainly have far expanded the concept of the right of expert assistance beyond that meager holding in Baldi. The primary reason that the Tennessee

Supreme Court seemed to ignore the spirit, if not the letter, of the holdings of this Court was a Tennessee decision relied upon for the holding that there is no constitutional right for any type of indigent assistance other than the providing of counsel at trial. In Graham v. State, supra, the Tennessee Supreme Court made this observation;

> Since there is no statutory sanction for the employment of a private psychiatrist at state expense, we look to case law for precedent. Our investigation into the law leads us to the conclusion that this is an area wherein the law has not been fully and finally settled. There is an apparent cleavage, with no qualitative or quantitative preponderance. See annotation, Right of Indigent Defendant in Criminal Case to Aid of State by Appointment of Investigator or Expert, 34 A.L.R. 3rd 1256. . . ", 547 S.W.2d at 535.

The language of the Tennessee Supreme Court in Graham, as relied upon in State v. Williams, supra, clearly seems to point out the need that this court address this increasingly important issue. Rule 17 of this Court setting forth the criteria for when certiorari jurisdiction will be granted sets forth the situation where state courts of last resort have decided a federal question in a way in conflict with the decisions of other state courts of last resort or of a Federal Court of Appeals. Since the Tennessee Supreme Court decision made reference to the annotation in 34 A.L.R. 3rd dealing with the right of an indigent to have an appointed expert, this Court's attention is also directed to that comprehensive article. The summary of cases set forth in that annotation clearly indicates that there is a total lack of harmony and uniformity in the way in which this Courts holdings and statements in this area have been interpreted by state courts of last resort and state legislatures.

The appropriate provisions of the Federal Criminal Justice Act can be found at 18 U.S.C. §3006A(e) (1970).

There is no specific statutory provision in the State of Tennessee which speaks to the issue of the provision of support services in the defense of indigent criminal defendants. T.C.A. §40-14-102 provides:

> Every person accused of any crime. . . is entitled to counsel in all matters necessary for his defense as well to facts as to law.

Not only is there a conflict among the numerous states on this issue, the Tennessee Supreme Court decision represents such an extreme at the end of the spectrum not allowing for any indigent assistance, that it has so far departed from accepted and usual course of judicial proceedings as set forth in the cases previously mentioned so as to call for an exercise of this Court's power of supervision.

Of extreme importance in this particular case is the fact that it can be readily seen that the field of hair analysis by microscopic comparison is relatively new and unknown to the trial bar when compared with other fields of forensics expertise as has been set forth earlier. The victim in this case was exhumed only three weeks before trial and the defense counsel received notice of the positive results of the state's tests very shortly before trial and had no opportunity without funds to prepare to rebut this new and critical evidence. It is important that the Tennessee Supreme Court in its decision in State v. Williams acknowledge that this was a crucial piece of evidence against the defendant. There also can be no dispute that the fact that this was a case in which the state was seeking the death penalty puts matters in somewhat of a different light. The right to effective

assistance is especially significant and important in death penalty cases where Courts have been ordered to be "particularly sensitive to see that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1976). Sentences of death are generally recognized as "qualitatively different" from prison sentences. Woodson v. North Carolina, 428 U.S. 280, 305, 96 S. Ct. 2978, 2991 (opinion of Stewart, J.)

A reading of the hearing on the defense motion for expert funds for assistance in this case clearly shows that there was no reason advanced by the Trial Court for the denial of assistance in this important area. In view of the fact that this was a capital prosecution and a short notice provided to counsel of this development, it was clearly a violation of the Sixth Amendment mandate and the protections of the Fourteenth Amendment to deny this type of assistance to an indigent defendant on trial for his life. It is submitted that any competent defense counsel had he been retained by a defendant who could afford some expert assistance fees would have secured expert assistance in this area. This was not a request for expert assistance on some academic or non-relevant area. Rather it was a request for assistance on a very technical and vitally important area. The petitioner has no qualms with the concurring observation of Justice Blackmun in United States v. MacCollom, supra, that the constitution does not "require that an indigent be furnished every possible legal tool, no matter how speculative its value, and no matter how devoid of assistance it may be, merely because a person of unlimited means might choose to waste his resources in a quest of that kind." Concurring opinion at 426 U.S. at 330.

The Tennessee Supreme Court and other jurisdictions that take an extremely limited view of the type of assistance that can be afforded an indigent defendant go to the other extreme from that mentioned by Justice Blackmum in MacCollom. The Tennessee Supreme Court seems to be saying that by analogy that no assistance will be provided to an indigent capitol defendant, regardless of the relevance or need for such assistance and it sanctions the concept of a trial judge automatically denying any and all requests for any assistance with the absolute knowledge that the Tennessee Supreme Court does not recognize the concept that he might abuse his discretion even in a case wherein a mans' life is at stake.

Clearly the guidelines set forth in Rule 17 would dictate that certiorari should be granted in this particular case. Petitioner is aware that a similiar request was made, although in a much abbreviated manner, in the initial Petition for Certorari in Eddings v. Oklahoma, 455 U.S. 104, 102 S. Ct. 869 (1982). However, the issue was not addressed in the final decision in Eddings possibly since the case was decided on other issues and that in the Eddings case the petitioner entered a plea of Nolo Stays Contendere to a murder charge which would seem to have not made it an issue really ripe for judication.

The petitioner does submit that based upon the variety of requested expert witnesses that often are necessary in a capitol case and in view of the Tennessee Supreme Court recognizing that there is a disharmony among various state courts of last resort that this is an issue that should be addressed at this time. It is clear from a reading of the various cases on this subject that the language that has been used by this Court in the numerous decisions touching upon sixth amendment rights beyond the narrow providing of counsel to an

indigent defendant have been relied upon by Courts in holdings allowing numerous pre-trial services on the one extreme to that of the Tennessee Supreme Court, which has to represent the clearly opposite extreme, of allowing no services other than appointed counsel. This is one of indigent defendant have been relied upon for holdings from allowing numerous pre-trial services on the one extreme to that of the Tennessee Supreme Court which has to represent the clearly opposite extreme of the few remaining issues in death penalty litigation that has not been clearly addressed by this Honorable Court. On this issue, petitioner submits that his petition for Writ of Certiorari be granted so that this issue can be squarely addressed by this Court to give guidance to numerous prosecutors and defense counsel across the country who are obviously rapidly rappeling with this issue without any clear guidelines from this Court even though it is an issue often of actual life and death importance to the parties.

II.

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER THE IMPROPER ARGUMENT OF THE PROSECUTOR IN THE SENTENCING PHASE OF THE DEATH PENALTY TRIAL, WHEREIN THE JURY IS IMPROPERLY TOLD OF A PREVIOUS DEATH PENALTY IMPOSED UPON PETITIONER AND TOLD OF THE CIRCUMSTANCES AND DETAILS OF THE PREVIOUS CRIME WITH WORDS SUCH AS "TOOK A GUN AND BLEW HIS BRAINS OUT" VIOLATED THE SIXTH AMENDMENT CONFRONTATION CLAUSE AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND CALLS FOR VACATING OF THE DEATH SENTENCE IN THE PRESENT CASE.

Petitioner was convicted of Murder in the First Degree (R. 790) by jury in this case and in accordance with T.C.A. §39-2-203 the trial then proceeded to a bifurcated Hearing (penalty phase) as provided therein.

The Court advised that it would charge the jury on two statutory aggravating circumstances (R. 796). These statutory aggravating circumstances as setforth in T.C.A. 39-2-203 are as follows:

> . . .(i)(2) The defendant was previously convicted of one or more felonies other than the present charge, which involve the use or threat of violence to the person. . . .(i)(7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.

During the bifurcated Hearing, the State introduced into evidence, before the jury, the following:

1. Certified copy of Judgment of Court of Davidson County, Tennessee (Ex. 1 to sentencing hearing) (R. 798, 866).

2. Certified copy of Judgment of Death Penalty for First Degree Murder on

   (Ex. 2 to sentencing Hearing) (R. 798-799 867).

These exhibits are included to this Petition as Appendix C. The record reflects that these Judgments were not passed to the jury (S.E. 799), nor were they read to the jury as to the facts and circumstaces of the particular conviction, the manner in which the murder was committed, or the title or position of the person the Petitioner was convicted of murdering (R. 799).

However, in the State's argument to the jury at the Sentencing Hearing, the State on two separate occasions stated to the jury that Laron Williams was found guilty, not only of Murder in the First Degree, as above stated, but that he had murdered a police officer in the line of duty (R. 808-809) (Emphasis supplied).

The State, in its argument to the jury at the Sentencing Hearing, further advised the jury that as punishment for the two previous convictions, the Petitioner had been sentenced to ten years in the State Penitentiary (R. 808) on the crime evidenced in Ex. 1, and that the Defendant had received the death penalty for the crime evidenced in Ex. 2 (R. 808).

The State further went outside the scope of proof, and in its argument, advised the jury that Laron Williams had been found guilty for the deliberate, premeditated murder of Lt. Edward Cox of the Memphis Police Department "when he took a gun and blew his brains out" (R. 813).

T.C.A. 39-2-203(c) allows in the sentencing proceeding evidence to be presented as to any matter the Court deems relevant to the punishment, and may include, but not limited to, the nature and circumstances of the crime. However, evidence of the nature and circumstances of the crime has been limited to evidence of a crime which is being committed while the Defendant was committing or attempting to

commit the crime involved in the case on trial. State v. Prichett, 621 S.W.2d 127 (Tenn. 1981) at 140. Nowhere, however, does it allow introduction of statements or evidence of the facts or circumstances of a previous crime. Even if it did, there was absolutely no evidence introduced either at the trial or the Sentencing Hearing which indicated that Laron Williams "took a gun" and "blew out the brains of Lt. Edward Cox".

An examination of Exhibit 2 to the Sentencing Hearing reveals that (1) it does not mention the name of Lt. Edward Cox; (2) it does not mention that the crime described therein was committed with a gun; nor (3) that the deceased victim's brains were blown out. Further examination reveals that Exhibit 2 is a certified copy of the Judgment of the Jury, giving the Petitioner the death penalty, and only refers to the previous Judgment of the Jury wherein they found the Defendant guilty of First Degree Murder in Shelby County, Tennessee. Therefore, such a statement by the District Attorney General is without the scope of the evidence and would not be proper for that reason alone. The Tennessee Supreme Court acknowledged that "as there is no evidence in the record about the details of the killing of officer Cox, Mr. Woodall's comment was improper. State v. Williams, supra at 413.

Such a statement was made solely for the purpose of inflaming the jury and shocking them sufficiently so that the death penalty would be certain. There can be no justification for such a statement, that the Petitioner "took a gun and blew his brains out" for the following reasons:

1. The purported facts, as stated, are not in evidence;

2. The statement is irrelevant to the issue of whether the Petitioner was guilty of the aggravating circumstance;

3. It is not a proven fact, and in fact, may be untrue, since there was no confrontation allowed the Petitioner.

4. This type of statement is not allowed under T.C.A. 39-2-203(c);

5. No mention is made in Exhibit 2 to the sentencing Hearing of Lt. Edward Cox, a gun, or blowing the victim's brains out (S.E. 868).

The State further informed the jury during the argument on the sentencing phase that Laron Williams had already received the death penalty for the conviction of First Degree Murder (R. 808,809). To prove the aggravating circumstances, the State introduced the certified copies of the Judgments in the two prior convictions (Ex. 1 and 2 to the sentencing Hearing).

All that is required of the statute is evidence of conviction. It is not required, nor specifically allowed, for the State to advise the jury of the punishment a Defendant has received from another jury, on another previous conviction, in a case with a completely different set of facts and circumstances.

The sentencing Hearing is statutory and must be strickly construed acoording to the wording of the statute.

The State, as previously mentioned, identified the victim of the crime described in Exhibit 2 of the sentencing hearing as Lt. Edward Cox of the Memphis Police Department (R. 813) and informed the jury that he was a police officer acting when murdered by the Petitioner. These statements were improper and should have been excluded by the Trial Judge.

The jury in a capital murder case is under a tremendous duty to judge the instant case on its facts as presented to them in the Trial Court. They are also under a lawful duty not to consider matters or things that are not in evidence.

Jurors have a duty to be morally certain that their decision is correct. The decision in the sentencing Hearing is:

1. To give the Defendant life imprisonment, or
2. To give the Defendant the death penalty.

To announce to the jury that the Defendant was previously convicted of First Degree Murder as proof of the statutory aggravating circumstance is proper.

To announce to the jury that the Defendant has already been sentenced to death in another case is quite improper. Such a revelation immediately lifts the moral burden of inflicting the death penalty from the jury's shoulders and opens their minds to consider that any sentence they give will be moot, because the Defendant is already under the death penalty.

Laboring under this disability, to tell the jury that the Defendant has previously been given the death penalty, effectively relieves them of their moral burden and makes it imminently easier to assess the death penalty in any case. The penalty assessed in prior cases is not proper evidence for the jury to consider when deciding what penalties to assess to the instant case.

The Petitioner does not deem it necessary to discuss in detail the recent holdings in Zant v. Stephens, 462 U.S.____, (1983), or Barclay v. Florida, 462 U.S. ____, (1983). It is true that in Zant the majority decided that a death sentence imposed by a Georgia jury could be upheld even though one of the three aggravating

circumstances found by the jury was later rejected by the State Supreme Court as having a unconstitutional foundation.

The lead opinion, representing the views of a four justice plurality, authored by Justice Rehnquist failed to vacate the death sentence in this Florida case even though the Judge's consideration of a non-statutory factor, the defendant's criminal record, was erroneous as a matter of state law. That plurality seemed to hold that nothing in the Federal Constitution bars the sentencer from considering the evidence admitted on that factor.

There is one extremely important distinction however that must be considered in the instant case. The complained of actions here occurred not in a subsequent legal decision, but rather as the deliberate and flammatory conduct of the representative of the very state that was seeking to take the life of Laron Williams.

There are numerous decisions that deal with the improper closing argument of prosecutors. The fact, however, that this is a death penalty case is an additional important factor. Brooks v. Francis, 716 F.2d 780, 787-90 (11th Cir. 1983), provides strong support for the argument that a higher standard at review applies when prosecutorial misconduct occurs during a capitol sentencing phase. "The jury must not be influenced by any arbitrary factors. A prosecutor may not incite the passions of a jury when a persons life hangs in the balance." Id. at 788. It also pointed out that "what the law condemns is the imposition of a sentence for the wrong reason." Id. at 790.

In addition to being violative of the Due Process protections afforded an indigent defendant, the Sixth Amendment right of confrontation also was clearly violated by the testimony in essence of the

prosecutor who stated that the petitioner took the police officers gun away and blew his brains out. Certainly this would be improperly imflammatory even if introduced properly in evidence. To make such a statement however where the defendant does not have the right to confront such an accusation is critically damaging.

The Court's attention is directed to the concurring opinion of Justice O'Connor in Eddings v. Oklahoma, 455 U.S. 104 (1982):

> Because sentences of death are 'qualitatively different' from prison sentences, Woodson v. North Carolina, 428 U.S. 280 (1976) (Opinion of Stewart, J.), this Court has gone to extraordinary measures to insure that the prisoners sentence to be executed is afforded process that will guarantee, as much as humanly possible, that the sentence was not imposed out of whim, passion, or prejudice or mistake. Surely, no less can be required when the defendant is a minor. 102 S. Ct. at 878

It should finally be pointed out that the decision in Zant v. Stephens, 462 U.S.____ (1983) specifically observes that:

> Finally, we note that in deciding this case we do not express any opinion concerning the possible significance of a holding that a particular aggravating circumstance is 'invalid' under a statutory scheme in which the Judge or jury is specifically instructed to weigh statutory aggravating and mitigating circumstances in exercising its discretion whether to impose the death penalty. 103 S. Ct. 2750.

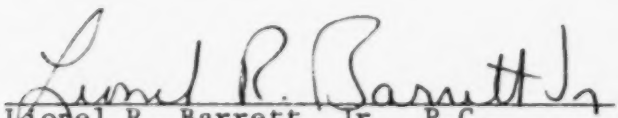
The petitioner submits that the Tennessee Supreme Courts affirming the death penalty in this case, even though acknowledging that the comments of the State prosecutor were improper, has decided this Federal question in a way that conflicts with the spirit and decisions previously set forth in the cases cited herein including the Eleventh Circuit decision in Brooks v. Francis, supra which clearly represents the correct prevailing view.

Notwithstanding the inapplicable language of Zant and Barclay, this issue alone would justify this Court in granting the writ of certiorari to review this important issue.

CONCLUSION

This case presents an opportunity for the Court to settle issues that have occured with conflicting results in other cases and will continue to be raised until finally decided by this Court. The decision of the Tennessee Supreme Court represents one extreme of the issue of whether or not indigent capital defendants can receive approximately the same type of defense a non indigent defendant receives. Because of this and the constitutionally improper argument of the prosecutor, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,



Lionel R. Barrett, Jr., P.C.
307 Third Avenue North
Nashville, Tennessee 37201
615/254-1471

MEMBER OF THE BAR OF THE UNITED STATES SUPREME COURT

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing brief is mailed to the Tennessee State Attorney General, 450 James Robertson Parkway, Nasvhille, TN 37219 on this the 29th day of December, 1983.

Linnie R. Barnett

ORIGINAL

NO.: 83_____

IN THE SUPREME COURT OF THE UNITED STATES

LARON WILLIAMS,)
)
Petitioner,)
)
vs.)
)
STATE OF TENNESSEE,)
)
Respondent.)

83-6016

Supreme Court, U.S.
FILED
DEC 30 1984
Alexander L. Stevas, Clerk

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Laron Williams, being first duly sworn, depose and say that I am the petitioner-appellant in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty that I am unable to the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal will be set forth in my osson to be filed Petition for Certiorari as explained in the attached affidavit of my attorney and the Motion to Extend Time to File Petition for Certiorari.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No. I last received salary and wages in the month of October, 1977. Those wages were Two Hundred Dollars ($200.00).

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No.

3. Do you own any cash or checking or savings account? No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

5. List the persons who are dependent upon you for support and state your relationship to those persons. No persons are dependent on me for support.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

LaRon Williams #85111
LARON WILLIAMS

Sworn to and subscribed before me
on this the 21st day of November, 1983.

William O Clendenen
NOTARY PUBLIC

My commission expires: 4-4-87

PLAINTIFF'S EXHIBIT
State 1

Davidson County

JOHN LASHLEE
CRIMINAL COURT CLERK

NASHVILLE, TENNESSEE 37201

JUNE 10, 1981

MR. GEORGE W. HYMERS
DISTRICT ATTORNEY GENERAL
P. O. BOX 2825
JACKSON, TN 38301

RE: LARON RONALD WILLIAMS

DEAR GENERAL HYMERS:

IN REFERENCE TO THE ABOVE NAMED INDIVIDUAL, PLEASE FIND ENCLOSED A CERTIFIED COPY OF THE INDICTMENT, THE MINUTE ENTRY REFLECTING HIS CONVICTION, TOGETHER WITH CERTIFIED COPIES OF HIS WRITTEN PLEA OF GUILTY, WAIVER OF JURY TRIAL AND WAIVER OF APPEAL.

IF IT IS NECESSARY TO SUBPOENA A WITNESS FROM THIS OFFICE FOR THE TRIAL OF THIS CASE, PLEASE FEEL FREE TO SUBPOENA ME AS JUDGE LEATHERS' CLERK IN DIVISION ONE, CRIMINAL COURT. I WOULD APPRECIATE IT IF YOU COULD GIVE ME A CALL PRIOR TO TRIAL TO LET ME KNOW WHAT, SPECIFICALLY, YOU WOULD WANT ME TO TESTIFY TO.

IF YOU NEED FURTHER INFORMATION CONCERNING MR. WILLIAMS, PLEASE CONTACT ME.

SINCERELY,

(MS.) NEIL THOMPSON, DEPUTY CLERK
DIVISION ONE, CRIMINAL COURT

ENCLOSURES

615-259-6161

JUN 13 1981

Filed 1-4-79
B Lenon

IN THE CRIMINAL COURT OF DAVIDSON COUNTY

STATE OF TENNESSEE)
)
VS.) Docket No. C-2574
)
LaRon W. Williams)
Defendant

PLEA OF GUILTY

The defendant, appearing in person in this cause, and having been fully advised by the court of the crime charged against him, the punishment which could be meted out if the defendant is found guilty and of his constitutional rights therein, hereby voluntarily pleads guilty to the offense of Murder 2nd Deg. 10 yrs Per

The defendant also states to the court that his Attorney being present, Honorable Mike Engle, has fully informed him of all of his rights and that after a full explanation of these rights, the defendant informed his Attorney that he wanted to voluntarily enter a plea of guilty, and to this decision of the defendant, said Attorney agrees.

This the 4 day of Jan., 1979.

Approved:

LaRon R. Williams
Defendant

Attorney for Defendant

Filed -
1-4-79
B Lennon

IN THE CRIMINAL COURT OF DAVIDSON COUNTY

STATE OF TENNESSEE

VS.

Docket No. C-2574

LaRon Williams
DEFENDANT

WAIVER OF APPEAL

Comes the defendant in person and with counsel and states to the Court that he was convicted of Murder 2nd 10 yrs Pen

on 1-4, 1979, and he does not desire to appeal his case to the Criminal Court of Appeals of Tennessee. He states that this decision has been made by him voluntarily after a full and complete discussion of same with his attorney.

By execution of this waiver of appeal, he voluntarily waives his right to file a motion for a new trial and therefore waives his rights of review of this conviction in any Appellate Court.

The defendant states that he fully understands his right to appeal his case and that he, nevertheless, desires not to appeal. His attorney agrees that defendant has no basis for appeal as there are no errors in the record.

This the 4 day of Jan., 1979.

LaRon R. Williams
Defendant

Attorney for defendant

rec.
1-4-74
B Lenn

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE

DIVISION One

STATE OF TENNESSEE NO. C-2574

VS.

Lyron Williams OFFENSE Murder 2nd

MOTION FOR WAIVER OF JURY

Pursuant to the authority granted by Section 40-2504 T. C. A., a motion has been seasonably made by the defendant to waive a trial by jury, which motion the court is pleased to grant.

The defendant makes oath in due form that he has been advised by counsel of the constitutional right of every defendant to a trial by jury, but through this motion, concurred in by the District Attorney General and counsel for the defense, desires to waive said privilege.

Attorney for defendant

Lyron R. Williams
Defendant

District Attorney General

Sworn to and subscribed to before me this

4th day of Jan, 19 74.

B Lenn D. C.

State of Tennessee, Davidson County

January Term of the Criminal Court, 1978

The Grand Jurors for the State of Tennessee, duly elected, impaneled, sworn and charged to inquire for the body of the County of Davidson, and State aforesaid, upon their oath aforesaid, present:

That Laron Ronald Williams

~~of said County~~, *heretofore, to-wit: On the* ____ *day of* October, 1977, *with force and arms, in the County aforesaid, unlawfully, feloniously, willfully, deliberately, premeditatedly and maliciously, did make an assault upon the body of one* Terra L. Wedlaw

*and h*er *the said* Terra L. Wedlaw

he the said Laron Ronald Williams

*then and there did unlawfully, feloniously, willfully, deliberately, premeditatedly, and of h*is *malice aforethought, kill and murder, against the peace and dignity of the State.*

Thomas H. Shriver, *Attorney-General.*

No. C-2574 1

STATE OF TENNESSEE

vs. MURDER

Laron Ronald Williams

Jessie Mae McDonald Prosecutor.

~~SESSION WITNESSES ROWLAND STAMP~~

R.C. Jackson

Bobby Green

Witnesses sworn in open Court and sent before the Grand Jury to testify in the above cause, this 13th *day of* April 19 78

Charles H. Wiles
Foreman of Grand Jury.

THOMAS H. SHRIVER
Attorney-General

A True Bill.
Charles H. Wiles Foreman

SUMMON WITNESSES FOR THE STATE:

Comp.#77-181309

Jessie Mae McDonald, 3324 22nd Street, Tampa, Florida

T.McElroy,Metro
Morris McKenzie, Metro
Bobby Green, Metro
Ronnie Craig, Metro
Tony Reed, 320 Welch Rd., Pagoda Apts.,P-4
Johnny Hunter, Metro ID
Dr.T.E.Simpkins, Med.Examiner, 262-2527
Edward D. Richardson, 510 Gay St.
R.C.Jackson,Metro
Jimmie D. Hollifield, 830 Glastonbury Rd., Apt.219 367-9178
Special Agent Fred Wallace, F.B.I.Laboratory, J.Edgar Hoover Bldg., Washington, D.C.:Attn: Hair & Fibers Section
Janis Ellis,

RECEIVED
APR 20 1970
EARL HAWKINS
CLERK

COURT MET PURSUANT TO ADJOURNMENT, PRESENT AND PRESIDING THE HONORABLE RAYMOND H. LEATHERS, JUDGE OF DIVISION ONE OF THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE, WHEN THE FOLLOWING PROCEEDINGS WERE HAD, TO-WIT:

THURSDAY, JANUARY 4, 1979

STATE OF TENNESSEE

SECOND DEGREE MURDER

C-2574
JURY WAIVED
WRITTEN
PLEA OF
GUILTY TO
2ND DEG.
MURDER
10 YRS.
PEN.
JAIL CREDIT
WAIVED APPEAL

VS.

LARON WILLIAMS

CAME THE ATTORNEY GENERAL WHO PROSECUTES FOR THE STATE AND THE DEFENDANT IN PERSON, BEING REPRESENTED BY COUNSEL.

THEREUPON, THE DEFENDANT, BY HIS COUNSEL, HAVING FILED A WRITTEN MOTION TO WAIVE A TRIAL BY JURY IN ACCORDANCE WITH SECTION 40-2504, T. C. A., BEING SIGNED BY THE DEFENDANT AND HIS ATTORNEY AND CONCURRED IN BY THE ATTORNEY GENERAL AND GRANTED BY THE COURT THIS CAUSE CAME ON TO BE HEARD BY THE COURT WITHOUT THE INTERVENTION OF A JURY UPON A WRITTEN PLEA OF GUILTY TO SECOND DEGREE MURDER AND THE DEFENDANT BEING DULY SWORN IN OPEN COURT AND TESTIFYING AND PLEADING GUILTY TO SECOND DEGREE MURDER AND UPON THE EVIDENCE INTRODUCED AND THE STATEMENT OF THE ATTORNEY GENERAL THE COURT FINDS THE DEFENDANT GUILTY OF SECOND DEGREE MURDER.

IT IS, THEREFORE, CONSIDERED BY THE COURT THAT THE DEFENDANT FOR HIS OFFENSE OF SECOND DEGREE MURDER SHALL BE CONFINED AT HARD LABOR IN THE STATE PENITENTIARY FOR A PERIOD OF TEN YEARS, COMMENCING ON THE DATE OF HIS DELIVERY TO THE KEEPER THEREOF, SUBJECT TO THE RULES AND REGULATIONS OF SAID INSTITUTION.

THEREUPON, THE DEFENDANT AND HIS ATTORNEY SIGNED A WRITTEN WAIVER OF HIS RIGHT TO FILE A MOTION FOR A NEW TRIAL AND THEREFORE WAIVES HIS RIGHTS OF REVIEW OF THIS CONVICTION IN ANY APPELLATE COURT.

THAT HE PAY THE COSTS OF THIS PROSECUTION FOR WHICH EXECUTION WILL ISSUE, AND THAT PURSUANT TO SECTION 16(A) OF PUBLIC CHAPTER 736 OF THE PUBLIC ACTS OF 1976, THE COURT FINDS THAT THIS IS A CRIME AGAINST PERSON OR PROPERTY AND THE DEFENDANT IS THEREFORE ASSESSED AN ADDITIONAL $21.00 COURT COSTS.

THAT HE BE ALLOWED CREDIT FOR HIS JAIL TIME FROM NOVEMBER 3, 1977 TO DATE.

(RECOMMENDATION OF THE ATTORNEY GENERAL)

MR. MICHAEL ENGLE AND MR. JOHN WADE, ATTORNEYS FOR DEFENDANT

MR. W. EDWARD BARNARD, ASSISTANT ATTORNEY GENERAL FOR THE STATE

ORDERED THAT COURT STAND ADJOURNED UNTIL IN THE MORNING AT NINE O'CLOCK.

/S/ RAYMOND H. LEATHERS

RAYMOND H. LEATHERS, JUDGE

STATE OF TENNESSEE

Killing done by one resisting felony of the defendant, criminal liability. 56 A.L.R.3d 239.

"Lying in wait," what constitutes. 89 A.L.R.2d 1140.

Mental or emotional condition as diminishing responsibility for crime. 22 A.L.R.3d 1228.

Premeditation or deliberation, presumption from the fact of killing. 86 A.L.R.2d 656.

Retreat, duty where assailant and assailed share the same living quarters. 26 A.L.R.3d 1296.

Spouse's confession of adultery as affecting degree of homicide involved in killing spouse or his or her paramour. 93 A.L.R.3d 925.

What constitutes murder by torture. 83 A.L.R.3d 1222.

39-2-203. Sentencing for first-degree murder. — (a) Upon a trial for murder in the first degree, should the jury find the defendant guilty of murder in the first degree, they shall not fix punishment as part of their verdict, but the jury shall fix the punishment in a separate sentencing hearing to determine whether the defendant shall be sentenced to death or life imprisonment. The separate sentencing hearing shall be conducted as soon as practicable before the same jury that determined guilt, subject to the provisions of subsection (k) relating to certain retrials on punishment.

(b) In the sentencing proceeding, the attorney for the state shall be allowed to make an opening statement to the jury and then the attorney for the defendant shall also be allowed such statement, provided that the waiver of opening statement by one party shall not preclude the opening statement by the other party.

(c) In the sentencing proceeding, evidence may be presented as to any matter that the court deems relevant to the punishment and may include, but not be limited to, the nature and circumstances of the crime; the defendant's character, background history, and physical condition; any evidence tending to establish or rebut the aggravating circumstances enumerated in subsection (i) below; and any evidence tending to establish or rebut any mitigating factors. Any such evidence which the court deems to have probative value on the issue of punishment may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements so admitted. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the state of Tennessee.

(d) In the sentencing proceeding, the state shall be allowed to make a closing argument to the jury; and then the attorney for the defendant shall also be allowed such argument, with the state having the right of closing.

(e) After closing arguments in the sentencing hearing, the trial judge shall include in his instructions for the jury to weigh and consider any mitigating circumstances and any of the statutory aggravating circumstances set forth in subsection (i) of this section which may be raised by the evidence at either the guilt or sentencing hearing, or both. These instructions and the manner of arriving at a sentence shall be given in the oral charge and in writing to the jury for its deliberations.

(f) If the jury unanimously determines that no statutory aggravating circumstances have been proved by the state beyond a reasonable doubt, or if the jury unanimously determines that a statutory aggravating circumstance or

circumstances have been proved by the state beyond a reasonable doubt but that said circumstance or circumstances are outweighed by one or more mitigating circumstances, the sentence shall be life imprisonment. The jury shall then return its verdict to the judge upon a form provided by the court which may appear substantially as follows:

PUNISHMENT OF LIFE IMPRISONMENT

(1) We, the jury, unanimously find that the punishment shall be life imprisonment.

/s/_____ /s/_____
Jury Foreman Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

(g) If the jury unanimously determines that at least one statutory aggravating circumstance or several statutory aggravating circumstances have been proved by the state beyond a reasonable doubt, and said circumstance or circumstances are not outweighed by any mitigating circumstances, the sentence shall be death. If the death penalty is the sentence of the jury, the jury shall:

(1) Reduce to writing the statutory aggravating circumstance or statutory aggravating circumstances so found; and

(2) Signify that there were no mitigating circumstances sufficiently substantial to outweigh the statutory aggravating circumstance or circumstances so found. These findings and verdict shall be returned to the judge upon a form provided by the court which may appear substantially as follows:

PUNISHMENT OF DEATH

(1) We, the jury, unanimously find the following listed statutory aggravating circumstance or circumstances:

[Here list the statutory aggravating circumstance or circumstances so found]

(2) We, the jury, unanimously find that there are no mitigating circumstances sufficiently substantial to outweigh the statutory aggravating circumstance or circumstances so listed above.

(3) Therefore, we, the jury, unanimously find that the punishment shall be death.

/s/_____ /s/_____
Jury Foreman Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

/s/_____ /s/_____
Juror Juror

(h) If the jury cannot ultimately agree as to punishment, the judge shall dismiss the jury and the judge shall impose a sentence of life imprisonment. The judge shall not instruct the jury, nor shall the attorneys be permitted to comment at any time to the jury, on the effect of the jury's failure to agree on a punishment.

(i) No death penalty shall be imposed but upon a unanimous finding, as heretofore indicated, of the existence of one or more of the statutory aggravating circumstances, which shall be limited to the following:

(1) The murder was committed against a person less than twelve (12) years of age and the defendant was eighteen (18) years of age, or older;

(2) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person;

(3) The defendant knowingly created a great risk of death to two (2) or more persons, other than the victim murdered, during his act of murder;

(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration;

(5) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind;

(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another;

(7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb;

(8) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement;

(9) The murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties;

(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupied said office;

(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official; and

(12) The defendant committed "mass murder" which is defined as the murder of three or more persons within the state of Tennessee within a period of forty-eight (48) months, and perpetrated in a similar fashion in a common scheme or plan.

(j) In arriving at the punishment the jury shall consider, as heretofore indicated, any mitigating circumstances which shall include, but not be limited to the following:

(1) The defendant has no significant history of prior criminal activity;

(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct;

(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor;

(6) The defendant acted under extreme duress or under the substantial domination of another person;

(7) The youth or advanced age of the defendant at the time of the crime; and

(8) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment.

(k) Upon motion for a new trial, after a conviction of first degree murder, if the court finds error in the trial determining guilt, a new trial on both guilt and sentencing shall be held, but if the court finds error alone in the trial determining punishment, a new trial on the issue of punishment alone shall be held by a new jury empanelled for said purpose. In the event that the trial court, or any other court with jurisdiction to do so, orders that a defendant convicted of first-degree murder (whether the sentence is death or life imprisonment) be granted a new trial, either as to guilt or punishment or both, said new trial shall include the possible punishments of death or life imprisonment. [Code 1858, § 4600 (deriv. Acts 1829, ch. 23, § 3); Shan., § 6441; Code 1932, § 10770; Acts 1977, ch. 51, § 2; 1981, ch. 33, § 1; T.C.A. (orig. ed.), § 39-2404.]

Section to Section References. This section is referred to in § 40-35-201.

Law Reviews. Criminal Law in Tennessee in 1979 — A Critical Survey, III. Procedure (Joseph G. Cook), 48 Tenn. L. Rev. 19.

[SEE TABLE IN FRONT OF THIS VOLUME FOR CHANGES IN SECTION NUMBERING]

IN THE CIRCUIT COURT OF MAURY COUNTY, TENNESSEE

(By Change of Venue from Madison County, Tennessee)

STATE OF TENNESSEE)

VS.) No. 81-430 & R. D. No. 1034

LARON R. WILLIAMS)

MOTION FOR FUNDS FOR EXPERT EVALUATION
(Conference Call)
December 3, 1981
4:00 p.m.

APPEARANCES:

Before the Honorable JAMES L. WEATHERFORD, Judge

For the State:
(Madison County)

MR. GEORGE W. HYMERS
MR. R. C. STEGALL
State Office Building
Jackson, Tennessee

(Maury County)

MR. ROBERT H. GAY
District Attorney General
Columbia, Tennessee 38401

For the Defendant:

MR. JAMES F. BUTLER
MR. BILLY JACK GOODRICH
Goodrich, Butler & Morgan
618 North Highland Avenue
Jackson, Tennessee 38301

MR. CHARLES PATTERSON
Key & Patterson
First Federal Building
Jackson, Tennessee 38301

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MR. BUTLER: General Hymers, we've got General Gay and Judge Weatherford on the line.

Is that right, Judge?

THE COURT: Yes, that's right.

MR. BUTLER: I think General Stegall is on the line. Is that right, General Stegall?

MR. STEGALL: I'm here.

MR. BUTLER: And Judge, we have Amy Canovan, Judge Taylor's court reporter here with us, and she's taking down all the conversation. We have me, Jim Butler, and Billy Jack Goodrich and Charles Patterson here. Any time you are ready to go we are ready.

THE COURT: We're ready. As I understand, this will be a motion on behalf of the Defendant Laron Ronald Williams, and by agreement of the State and the Defendant, this motion is being heard between Lawrenceburg and Jackson, Tennessee.

MR. BUTLER: That's my understanding of it. Can you hear everybody okay, Judge?

THE COURT: Yes, I can hear you fine.

As I stated, this is a motion in the case of State vs. Laron Ronald Williams, a motion on behalf of the Defendant, heard by conference call from Jackson, Tennessee. The people, as I understand it, who are on the phone, are James F. Butler, Billy Jack Goodrich, Mr. Charles Patterson, for the Defendant;

for the State, George Symmers, General Robert H. Gay and General Stegall from Jackson.

So I'm ready to hear your motion.

MR. BUTLER: All right, thank you, Your Honor.

I don't know if the Court has a copy of this motion in front of you or not, but this is a motion filed by the Defendant for funds for an expert evaluation. To just sort of bring the Court up to date, let me tell you what we've got here.

About eight or ten days ago, the State of Tennessee exhumed the deceased in this case, Father Jackson, over in Memphis and took some hair samples. Father Jackson was buried sometime toward the middle of May, 1981, and he has been buried since that time. Sometime around the first of November he was exhumed pursuant to Judge Taylor's order down here in Jackson, and certain hair samples were taken from him for the purpose of attempting to match these hair samples, of course, to hair samples that were allegedly found on some of the clothing belonging to the Defendant. That was done, and of course, we didn't have anything to say about whether he was exhumed or not, and the hair samples were sent to the FBI crime lab up in Washington for evaluation. Of course, we have just now gotten the report. Now we got word of it by word of mouth through General Woodall several days ago, about five days ago, I think Monday or something

like that, but we've not had a chance to examine this evidence at all, and we don't have any way to examine this evidence. This is something that's completely and totally foreign to us as lawyers in the field of criminal law, the examination of a hair expert or knowing anything about hair. Our position is that the State has numerous experts and investigators and ballistic experts and fingerprint experts, and now they have an expert in the field of hair samples. They are going to spend a lot of money getting that analyzed and sent down here to Columbia for the trial, and I assume that this man will appear as the State's witness and will attempted to be qualified as an expert witness in this field.

MR. HYMERS: He's been qualified in our courts here in this county as an expert on a prior case.

MR. BUTLER: Well I wasn't aware of that, but I assume he will be qualified or attempted to be qualified in Maury County.

MR. HYMERS: You've reported it very accurately other than I do want the Judge to know that you and I believe the other attorneys were in Judge Taylor's chambers when the order to exhume the body was requested and was granted, and you were aware of that that day.

MR. BUTLER: That's right. We were there and objected to it, but really we had no standing to object and we understand that.

But the crux of our motion is that we feel that in a case like this where we have a capital case and the punishment, if it's carried out if the State wishes, is not going to be one of degree but in kind, death for death. And because it's a capital case, we feel that there are certain safeguards that need to be exercised in a case like this because of the finality of the punishment in the event that something comes up later.

Now the report I got, Judge Weatherford, stated on its face that this identification or this microscopic analysis of this hair sample is not an exact science. It says that it's not to be taken as a positive identification method. Of course, what we've got here is that they are going to try, I think, to identify and match up certain hairs, some from the deceased and some found, and the hair sample report says that they exhibit the same individual characteristics, and that they probably, and I emphasize the word probably, originated from a common source. They point out that these hair comparisons do not constitute a basis for positive personal identification.

We feel, briefly, and I won't argue the point too much longer, other than to say that fundamental fairness in a case like this and from all the federal cases that I've looked at and the briefs that I've looked at and some of the reading that's been done, as much as we can find on it, we

feel that fundamental fairness requires that we be afforded some expertise in this field ourselves so that we can affectively assist this man in his defense. We know this is an adversary system and we understand that, but all the guns are on the State's side, and this is a most important piece of evidence and it's come up late in the game. I don't know why it didn't come up before, but it's just come up, and we have no way at all to know anything about it or to cross-examine it or to know anything about hair samples. I think all of us pretty well know a little bit about psychiatry because that comes up in most every case, and the State always provides psychiatrists to examine defendants, even indigent defendants, at the state's expense. We all know more about psychiatry than we do hair samples, yet the State resists our request for funds to employ and find a hair sample expert, and we would suggest as an alternative, that maybe an unbiased independent state-employed hair expert, one in this state who is not connected with this trial might be of assistance to the defense. The State's position is to do justice and to be fair to all, and they spend whatever funds they feel are necessary to process a case and to insure one of a fair trial, and that's what we are all looking for, a fair trial. We feel that, number one, we could be furnished funds for a hair expert, or we could be furnished someone from the state's coffers, so to speak,

to assist us and to give us some information and to examine this hair. As I understand, it is not an exact science, and it's going to be an opinion. And as you know, in many of the judge's charges they say that you should view expert opinion cautiously, expert witnesses. This is not to cast any reflection upon the State's witness here from the FBI crime lab but merely to say that we don't know whether he's right or wrong. Our method of cross-examination would merely to be just stand there and look him and ask him some few questions not really knowing what we are talking about and not really be able to assist our client in something as new to us and as complicated as this because to my knowledge, we don't have any hair sample cases in Tennessee whether the courts have ruled one way or the other that this is something that you can do as an exact science. I know General Hymers commented that it had been done here in Jackson once before. I assume that General Hymers is talking about the Melson case which is just a recent case within the past year. I wasn't in that case and didn't know that, but it seems like somebody did say something abou t it.

But that's the crux of our motion, Judge Weatherford, and we understand the State resists that, but we feel like to affectively assist our client that we need that. Since this is a capital case and the punishment is final, we feel that this is something that we should ask for and that we

should be awarded in this case.

THE COURT: Let me ask you this. What kind of expert is this?

MR. BUTLER: Your Honor, as I understand it, the man's name is Mr. Malone, I believe.

Am I right, General?

MR. HYMERS: That's right.

MR. BUTLER: His name is Mr. Malone, and he's from the FBI crime lab. As I understand it, and General Hymers probably could tell you more about this than I could --

General, why don't you try to answer that question.

MR. HYMERS: All right. I did answer the motion that was put down in this matter that Mr. Butler has just referred to, and it was a two-prong reply. Initially we contend that the Defendant is not entitled to -- Maybe I just better get that.

MR. STEGALL: November 30th is the date on it.

MR. HYMERS: In the reply that was submitted, it was submitted on the 30th day of November, and it was entitled, "Petition to Strike Motion for Funds for Expert Evaluation." The first prong of it was to contend that the Defendant was not entitled to an independent expert evaluation as a matter of law. Now I refer the Court and the defense attorneys to the recent case in the Criminal Court of Appeals, State vs. James Martin, Jr., and then another case in State vs. Tyson,

and I cited there, "The Court held that there was no Constitutional requirement of appointment of an expert for an indigent defendant."

The next theory in my reply was that this would be quite the same as if they were asking for a drug specimen to be examined by an expert of their choice. I was citing some of the cases in that regard, and one of the cases that I cite is Latham vs. State. The purpose of that was that unless the defendant could show us that the expert that the State is going to produce is inaccurate in some way, they wouldn't have any justification. There's been no showing what the independent expert witness is expected to offer.

Now back to the question of the FBI expert. He is an expert in hairs and fibers, and he did qualify as an expert, and he will testify as to a hair that was taken from the head of the deceased, and it was compared with the hair that was found on the clothing or in the pocket of the shirt of the subject, and he will testify that they have similar characteristics.

Now the State maintains that there are no funds to produce such an expert, and frankly, if I might just be frank with the Court and frank will all those that are listening, I don't know of anybody in the State of Tennessee who is an expert on hair samples. We had to send our material to the FBI laboratory in Washington, D. C. for an examination.

We maintain that our expert is qualified and that he will testify as to what I've outlined. There's been no showing that an independent expert witness, what he could offer, or that the State's witness is not going to be accurate, and we maintain that our witness will be accurate.

Now they are asking for funds, and I don't know where they'll get their expert, Judge. That's about as informal and brief as I can be. The references that I have cited are here in the Petition to Strike, and that's in brief what the position of the State is.

THE COURT: Do any of the other lawyers want to say anything?

MR. HYMERS: Mr. Gay, do you have anything to add?

MR. GAY: No, I think you've pretty well covered it.

MR. BUTLER: Your Honor, I would like to respond just briefly. Of course, there is no showing at this time what this hair expert or fiber expert is supposed to tell us different from what he's already told us because all he has said is is that they probably came from a common source, and this is not a positive personal identification method. Yet I assume that they are going to attempt to positively identify the Defendant through this method.

There were certainly funds for the State to get an expert in this case to positively identify this man or attempt to, and we have no way of knowing what an expert will

show because we don't know anything about this other than this two-page report that we received from Washington.

It's hard to argue with the state because they've got all the funds and we haven't.

MR. HYMERS: While you are talking about money, the FBI will send this man down here not at the expense of the State but of the Federal Government. But go ahead and make your argument.

MR. BUTLER: Federal government or State government, we are still stuck here without any money at all and hardly enough to even make a long distance phone call much less to seek out and hire a hair expert.

I would assume that we would probably be able to find one somewhere in the state who might be employed by the State or even in the Tennessee crime lab. They've got several experts up there. I think that the State, who is also seeking justice in this cause, might give us a little information as to what sources they do have.

MR. HYMERS: Our knowledge is of the laboratory in Washington, and that's the one we went to.

MR. GAY: There is no fiber/hair expert at the crime lab of the State of Tennessee. That is the reason that the State in cases of this nature has to go to the crime laboratory maintained by the FBI.

THE COURT: Mr. Butler, other than some expert

who is employed by the State, do you have any expert in mind at this time?

MR. BUTLER: No, Your Honor, we don't. Of course, it's been sort of sudden to us, and we don't have one, don't even know really where to look, and we've got no funds to look with if we did look. We have no idea where to look for one.

THE COURT: Is there another lawyer that wants to make some comment about this?

MR. BUTLER: Not on this end, Your Honor.

THE COURT: General Hymers, is there anything else you want to add?

MR. HYMERS: No, I don't think so, Judge. We would like to say, and I'm sure that Mr. Butler and Mr. Patterson and Mr. Goodrich are aware, that we also plan to use ballistics expert in connection with the weapon and the bullets involved. Now those experts are coming from the Tennessee crime lab.

MR. BUTLER: Of course, our response to that is that we've got some knowledge about ballistics, Judge Weatherford, and I've cross-examined ballistics experts before and know a little about that, but this expert is just completely different and foreign to us, and that's why we made this motion.

THE COURT: All right. It's hard for me to say,

and you might be able to find an expert qualified for this particular type of thing and then you might not. Right now I'm going to overrule your motion. I won't continue the case. If you can come back at such a time as not to delay the case and tell me that you have an expert who will be available who is qualified to do this type work, then I'll reconsider the motion. To grant the motion when we don't know whether or not you'd ever find one or not, I could not do that. But if you can find one that can do this so as not to delay the trial, then I'll certainly consider it.

MR. BUTLER: I would ask the Judge to request General Hymers that if General Woodall who is not here today, but if he should happen to know of anybody, that he could even just tell us who we might even contact, we would be glad to do that. We will be here all day tomorrow working on the case.

MR. HYMERS: I'll ask General Woodall to call you tomorrow.

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END OR REQUESTED TRANSCRIPT OF EVIDENCE.

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CERTIFICATE

I, the undersigned, Amy H. Canovan, Official Court Reporter for the 12th Judicial Circuit of the State of Tennessee, do hereby certify that the foregoing is a true, accurate and complete Transcript of Evidence of all the proceedings had in the Motion for Funds for Expert Evaluation, relative to appeal, in the Criminal Court for Maury County, Tennessee, on the 3rd day of December, 1981

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 31, 1982
Date

Amy H. Canovan
Court Reporter

CERTIFICATE OF THE COURT

THIS WAS ALL THE EVIDENCE INTRODUCED AND PROCEEDINGS HAD RELEVANT TO QUESTIONS RAISED ON THIS APPEAL ON THE MOTION IN THIS CASE.

The defendant having moved the Court for funds for expert evaluation, which motion appears in the technical record, and the Court having overruled said motion, and the defendant having excepted thereto, the defendant tenders this, his Transcript of Evidence, to the aforesaid action of the Court, which is signed, approved and ordered to be made a part of the record by the Court.

June 14, 1982
Date

James E. Weatherford
Judge

ATTORNEYS APPROVAL:

Jerry Woodall
Attorney for the State

Attorneys for the Defendant

STATE of Tennessee, Appellee,

v.

Laron Ronald WILLIAMS, Defendant-Appellant.

Supreme Court of Tennessee, at Nashville.

Aug. 29, 1983.

Rehearing Denied Oct. 3, 1983.

Defendant was convicted in the Criminal Court, Maury County, James L. Weatherford, J., of first-degree murder and first-degree burglary, and death sentence was imposed for first-degree murder conviction. Defendant appealed. The Supreme Court, Drowota, J., held that: (1) evidence was sufficient to support convictions; (2) defendant was not unfairly surprised by witness' in-court identification; (3) effective assistance of counsel was not abridged by denial of defendant's motion for funds to secure expert in field of hair analysis; (4) witness was properly declared expert in field of fingerprint analysis; (5) portion of transcript of interview of defendant by police officer was properly admitted to show inconsistency between defendant's statement in transcript and statements of alibi witnesses; (6) testimony of FBI agent concerning his finding after analyzing hair samples was properly admitted; (7) comments made by State's counsel during closing argument of sentencing phase of trial were not prejudicially improper; and (8) evidence was sufficient to support imposition of death sentence.

Affirmed.

Brock, J., filed statement concurring in part and dissenting in part.

1. Criminal Law ⇐1160

Jury verdict approved by trial judge accredits testimony of witnesses for State and resolves all conflicts in favor of State's theory.

2. Criminal Law ⇐1144.13(3, 5)

On appeal from conviction, State is entitled to strongest legitimate view of evidence and all reasonable or legitimate inferences which may be drawn therefrom.

3. Criminal Law ⇐308

Verdict against defendant removes presumption of innocence and raises presumption of guilt on appeal, which defendant has burden of overcoming.

4. Criminal Law ⇐1159.2(7)

Where sufficiency of evidence is challenged, relevant question for appellate court is whether, after viewing evidence in light most favorable to prosecution, any rational trier of fact could have found essential elements of crime beyond reasonable doubt. Rules App.Proc., Rule 13(e).

5. Criminal Law ⇐552(3)

Conviction may be based entirely on circumstantial evidence where facts are so clearly interwoven and connected that finger of guilt is pointed unerringly at defendant and defendant alone.

6. Criminal Law ⇐558, 562

There is no requirement that state's proof be uncontroverted or perfect to sustain conviction by jury.

7. Criminal Law ⇐1159.4(2)

Whether witness' testimony is believable or smacks of overzealous desire to assist state in punishing someone for death of victim is not question for appellate court.

8. Criminal Law ⇐1159.4(2)

Jury's province being that of determining witness' credibility, Supreme Court may not substitute its judgment on appeal for jury's judgment.

9. Homicide ⇐253(1)

Evidence that defendant was seen at rectory where murder of priest occurred, that defendant admitted he was on premises of rectory, that hair forcefully removed from defendant's clothes was indistinguishable from that of victim, that defendant sold murder weapon to third party on day after murder, that account of alibi witnesses of defendant's whereabouts was incon-

sistent with defendant's own account, and that description by witness who placed defendant at rectory and description by third party to whom murder weapon was sold were both of black man wearing jacket and little billed hat was sufficient to support conviction of first-degree murder.

10. Criminal Law ⇐629

Despite contention that State failed to comply with defendant's discovery motion to state specifically any eyewitnesses of which State had knowledge and who allegedly witnessed crime, State's response that it had no knowledge of eyewitnesses to murder was proper and correct and testimony of witness was properly admitted in prosecution for first-degree murder in which witness was not eyewitness to crime but only saw defendant at scene of murder shortly after homicide had been committed.

11. Criminal Law ⇐627.7(3)

Defendant was not unfairly surprised by witness' in-court identification of defendant in prosecution for first-degree murder in which State provided defendant with as much information as it had about testimony of witness prior to trial, and State was not aware that witness could identify defendant until witness saw defendant through glass of courtroom door during trial.

12. Criminal Law ⇐641.12(3)

Defendant's right to effective assistance of counsel was not abridged in prosecution for first-degree murder by denial of defendant's motion for funds to secure assistance of expert in field of hair analysis to examine hair forcefully removed from defendant's clothes that was indistinguishable from hair of victim. U.S.C.A. Const. Amend. 6.

13. Criminal Law ⇐481, 1153(2)

Qualification of expert witness is within sound discretion of trial court, and decision will not be reversed absent clear abuse of discretion.

14. Criminal Law ⇐478(1)

Trial court committed no error in declaring witness to be expert in field of fingerprint analysis in prosecution for first-degree murder where witness had graduated from three-week and two-week courses in fingerprint analysis, had attended various seminars on such analysis, and had worked as fingerprint examiner for more than six years.

15. Criminal Law ⇐412.2(5)

In prosecution for first-degree murder in which defendant had presented alibi witnesses, portion of transcript of interview of defendant by officer after defendant had waived his *Miranda* rights read in open court as evidence for State's case was properly admitted to show inconsistency between defendant's statement in transcript as to his whereabouts and statements of alibi witnesses.

16. Criminal Law ⇐412.1(1)

Although there is some limitation on defendant's placing his own statement into evidence, such statement being self-serving and lacking any guarantee of testimonial trustworthiness, there is no similar limitation on state's offering defendant's declaration which was freely given.

17. Criminal Law ⇐393(1)

In prosecution for first-degree murder in which defendant had presented alibi witnesses, portion of transcript of interview of defendant by officer after defendant had waived his *Miranda* rights, read in open court as evidence for State's case to show inconsistency between defendant's statement in transcript as to his whereabouts and statements of alibi witnesses, did not violate defendant's privilege against self-incrimination. U.S.C.A. Const.Amend. 5.

18. Criminal Law ⇐488

Expert testimony of FBI agent concerning his finding after analyzing hair samples taken from victim and from clothing of defendant that such samples were indistinguishable and were probably from common source was properly admitted in prosecution for first-degree murder in that such testimony was highly probative to establish fact of defendant's identity as perpetrator of crime and conformed to gen-

erally accepted explanatory theory of hair analysis tests that it would be highly unlikely for two persons with hair that matches to deposit their hair in same place.

19. Criminal Law ⇐1171.1(1)

In consideration of whether improper conduct on part of state requires reversal, court may look to several factors, such as effect of curative measures taken by trial court, intent of prosecution, cumulative effect of improper conduct and any other errors in record, and relative strength of case.

20. Criminal Law ⇐1171.6

Even though there was no evidence about details of defendant's unrelated killing of a police officer, comment of State's counsel in closing argument during sentencing phase of prosecution for murder in the first degree that defendant had blown police officer's brains out was harmless error, since comment was isolated and argument was in all other respects temperate.

21. Criminal Law ⇐1171.6

Comment of State's counsel in closing argument during sentencing phase of prosecution for first-degree murder that defendant had pending prior death sentence for unrelated murder charge was proper, since defendant had stipulated to his past murder convictions and sentences imposed for those convictions.

22. Criminal Law ⇐986.6(3)

Fact of pending prior death sentence should not be admitted as evidence during sentencing phase of trial except by agreement.

23. Homicide ⇐354

Fact of prior murder convictions coupled with present first-degree murder conviction was statutorily sufficient to support sentence of death in prosecution for murder of priest in which defendant presented no evidence of mitigating circumstances, and aggravating circumstances were strong.

24. Criminal Law ⇐1134(1)

On review of imposition of death sentence by jury, Supreme Court does not speculate about thought processes of jury; Supreme Court reviews evidence and statutory requirements and ensures that jury has been instructed properly on the law.

25. Criminal Law ⇐1208.1(4)

Statute governing imposition of death sentence has as its goal elimination of capriciousness in deliberating process of jury.

26. Criminal Law ⇐1208.1(5)

While jury has responsibility of determining sentence, its decision is guided by statute; it is only after finding at least one aggravating circumstance that death penalty may be given.

James F. Butler, Billy Jack Goodrich, Charles Patterson, Jackson, for defendant-appellant.

William M. Leech, Jr., Atty. Gen. and Reporter, Kymberly Lynn Anne Hattaway, Asst. Atty. Gen., Nashville, George W. Hymers, Dist. Atty. Gen., James G. Woodall, Asst. Dist. Atty. Gen., Jackson, for appellee.

OPINION

DROWOTA, Justice.

The Defendant, Laron Ronald Williams, appeals his conviction of first degree murder, for which he was sentenced to death, and his conviction of first degree burglary, for which he was sentenced to no less than ten nor more than fifteen years in the state penitentiary. He presents to this Court several issues for review, all of which we have carefully studied and found to be without merit.

Since the Defendant challenges the sufficiency of the evidence for his convictions, we summarize the evidence presented at trial. On Friday, May 15, 1981, at about 8:20 a.m.,[1] Father John Jay Jackson was

1. When Father Jackson had not appeared by 8:20 to celebrate an 8:10 a.m. Mass, the parish bookkeeper unlocked the back door to the rectory and went inside. He found the priest lying on the floor of the den four feet inside the door.

found dead inside the rectory of St. Mary's Catholic Church in Jackson, Tennessee. The pockets of his clothing were pulled out, and coins were scattered on the floor of the den and in the hallway. A sliding glass door which opened onto a screened-in porch had been shattered; and scattered papers and an overturned potted plant on a coffee table indicated there had been a struggle. In addition, the drawers of a desk located in the bedroom area of the rectory had been pulled out and thrown on top of the desk with their contents in disarray. Outside, the footprints of someone wearing tennis shoes led from the rectory to a nearby dumpster, then across the Highway 45 Bypass to a building called Watkins Tower.

The pathologist and medical examiner testified that Father Jackson died between 8:00 and 8:30 p.m. on Thursday, May 14. The autopsy revealed he died as a result of a gunshot wound to the back of the right shoulder. There was a second, nonfatal gunshot would in the left shoulder. Scrapes on the body indicated the priest had struggled with his assailant, and lacerations on the priest's head were consistent with blows from a blunt instrument such as a gun.

On Thursday night, May 14, Father Jackson ate dinner with the Timby family and left between 8:00 and 8:10 p.m. It takes approximately three minutes to walk from the Timby residence to the rectory. Ed Bendoski, a resident of St. Mary's Manor, a home for retired persons located next to the rectory, testified that at 8:22 p.m. on the evening of May 14, he and his wife looked outside the window of an eighth floor lounge at the manor, which faces the Highway 45 Bypass. He saw a car parked in the southwest corner of the parking lot of Watkins Tower across the highway from the Manor. Noting that it was unusual to see a car parked in that area after business hours, Bendoski and his wife proceeded to their apartment located on the eighth floor of the manor. At approximately 8:24 p.m., while looking from a window in the hallway of the eighth floor, Bendoski saw a tall black man approach the dumpster located on the ground. This man lifted up both of the lids to the dumpster, took a box out of the dumpster, reached under his belt or shirt and then placed something into the box. Then he walked "in a big hurry" toward the bypass. Police later found a cardboard box containing two coins just off the corner of the Watkins Tower parking lot, across the Bypass from St. Mary's Manor.

Bendoski testified that at the time he saw the man at the dumpster, it was dusk. However, the area surrounding St. Mary's Manor, from the dumpster to the highway, is well lighted and was illuminated at the time he saw the man. As Bendoski stood 50 to 55 feet from the ground and the dumpster was 50 to 60 feet from the building, he observed the man at the dumpster at an angle. The man wore a cap with a bill, a jacket, and dark pants and shoes. His hair was long. At trial, Bendoski positively identified the Defendant as the man he had seen.

On cross-examination, Bendoski testified he watched the man for approximately four or five minutes. During that period of time, he saw the Defendant's face from the side on two or three occasions, some seven to eight seconds each time. When the Defendant walked around the dumpster, Bendoski was able to see the Defendant's face from the front. Bendoski told an investigator that he could identify the man he saw at the dumpster, but apparently this information didn't register with the investigator for the police never made an attempt to ascertain whether he could identify the Defendant or anyone else from photographs or a lineup.

On Friday evening, May 15, the Defendant sold a .38 Smith & Wesson revolver to Evan Chapman, owner of Chat's market and Cafe, in Jackson. Chapman testified the Defendant was wearing blue jeans, a short jacket, tennis shoes, and a little hat. The Defendant indicated he acquired the pistol as a security guard in California and that he wanted to sell it because he needed the money. He asked for sixty to seventy dollars for the gun, which was worth be-

tween two and three hundred dollars on the open market. Chapman gave the Defendant only half the amount he asked for, pending a police check of the gun. In addition to selling Chapman the unloaded gun, the Defendant gave him four rounds of ammunition. When the check revealed that the gun was one missing from the Memphis Police Department,[2] the police had Chapman identify the man who sold him the gun from six photographs. On the morning of May 17, the police arrested the Defendant, who was wearing a jacket, pants and tennis shoes.

Ballistics tests revealed that the bullets taken from the fatal wound and from the wall in the rectory had been fired from the revolver sold to Chapman. Hairs taken from the Defendant's jacket were indistinguishable from Father Jackson's hair.[3] The hairs recovered from the Defendant's jacket had been forcibly removed. None of the fingerprints found inside the rectory, however, matched the Defendant's fingerprints. Investigators did discover impressions which appeared to have been made by gloved fingers on several pieces of the glass from the broken sliding door and on the door itself. None of the shoeprints found by the police matched the Defendant's tennis shoes. The police were unable to locate the tennis shoes which they believed made the shoeprints.

The Defendant presented alibi witnesses. Howard Williams testified he and the Defendant were together on Thursday May 14, from 6:00 to 10:30 p.m. They played pool, drank and danced at the Carousel Club and Chat's Place. An employee of Chat's Place remembered the Defendant being there between 8:00 and 9:00 p.m., or perhaps a little later, because a dispute arose between the Defendant and another person over a pool game. At trial, the state read a statement by the Defendant denying any knowledge of the crime or the gun and telling of his activities on May 14. The Defendant's statement to the police was inconsistent with his witnesses' alibi testimony. In the statement, the Defendant said he was with a guy called "Hambone" most of that night. The Defendant did not testify.

Roderick Elmore, an inmate of the Shelby County Jail awaiting trial on a charge of armed robbery, came into contact with the Defendant when they were both incarcerated in June of 1981. At that time, Elmore overheard portions of a conversation between the Defendant and an unnamed individual. During the course of this conversation, the Defendant stated he had been driven to Jackson by his girlfriend. The Defendant also stated he was on the grounds of the rectory and that he had sold a pistol to someone in Jackson. Elmore, who could not hear the entire conversation, did not hear the Defendant say what time he was at the rectory, whether anything happened to him at the rectory, whether he came into contact with anyone at the rectory or whether he obtained anything of value while he was at the rectory. Elmore testified he made no deals with the prosecution in Memphis or in Jackson in exchange for his testimony at the instant trial. Though he could not see the Defendant as he spoke, Elmore was positive the voice was the Defendant's.

The only proof introduced at the sentencing hearing was two certified copies of Defendant's convictions for first degree murder in Shelby County and second degree murder in Davidson County. These documents were stipulated to by the State and defense counsel.

2. Sgt. Gooch of the Memphis Police Department testified that the .38 caliber revolver belonged to the Memphis Police Department and had been missing since May 12, 1981.

It was properly kept from the jury in this case that the revolver belonged to Lt. Cox, who was fatally shot with his own gun by the Defendant on May 12. *State v. Williams*, Shelby Criminal. See also footnote 6.

Louise Hawkins, an acquaintance of the Defendant, testified that she drove the Defendant to Jackson the evening of May 12, and rented a room for him at the Regency Inn for one week. She returned to Memphis that evening.

3. Father Jackson's body was exhumed on November 16, 1981, and hair was taken from the top and sides of the head.

I

[1–3] The Defendant's first four issues concern whether there is sufficient proof to sustain his convictions. The principles which govern our review of a conviction by jury are settled. A jury verdict approved by the trial judge accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the State's theory. *State v. Hatchett*, 560 S.W.2d 627 (Tenn. 1978); *State v. Townsend*, 525 S.W.2d 842 (Tenn.1975). On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. *State v. Cabbage*, 571 S.W.2d 832 (Tenn. 1978). A verdict against the Defendant removes the presumption of innocence and raises a presumption of guilt on appeal, *State v. Grace*, 493 S.W.2d 474 (Tenn.1973), which the Defendant has the burden of overcoming. *State v. Brown*, 551 S.W.2d 329 (Tenn.1977).

[4, 5] Where the sufficiency of the evidence is challenged, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); Rule 13(e), T.R.A.P. Moreover, a conviction may be based entirely on circumstantial evidence where the facts are "so clearly interwoven and connected that the finger of guilt is pointed unerringly at the defendant and the defendant alone." *State v. Crawford*, 225 Tenn. 478, 484, 470 S.W.2d 610, 612 (1971).

To support his argument, Defendant points to several seemingly loose ends in the proof presented at trial. First, he directs our attention to the State's theory that the footprints outside the rectory were made by the victim's killer. But these prints did not match the soles of the Defendant's shoes. Second, the pistol used in the homicide did not have the Defendant's fingerprints on it. Third, the ballistics report on the bullets fired from the gun which the Defendant sold to Evans Chapman was not perfect. While the bullets matched those retrieved from the victim's body and from the room in which the body was found on many points, there were other points that did not match. Fourth, he points to the testimony of FBI agent Malone, who examined and compared hair samples taken from the victim and from the clothing of the Defendant. Malone testified the hairs were indistinguishable and that they were probably from a common source, but that this sort of analysis did not constitute a basis for positive personal identification. Fifth, he attacks Ed Bendoski's testimony as "unbelievable." Sixth, he contends that according to the witnesses, the Defendant was not at the rectory at St. Mary's Church at the time of the murder.

[6–8] Mindful of these seemingly loose ends, we nevertheless remind the Defendant our review must be limited to whether a rational fact finder could find him guilty of the charges beyond a reasonable doubt. There is no requirement that the State's proof be uncontroverted or perfect. For the most part, the Defendant's attacks bear on the weight of the evidence. For example, whether Bendoski's testimony is believable or not, and whether it "smacks of an overzealous desire to assist the State in punishing someone for the death of Father John J. Jackson" are not questions for an appellate court. The jury's province being precisely that of determining a witness's credibility, we may not substitute our judgment on appeal for the jury's judgment. Bendoski testified he saw the Defendant at the dumpster near the retirement home, and the jury believed him. Likewise, agent Malone's opinion regarding the hair samples was for the jury to ponder, weigh, discard or accept. We may assume they chose the last. As regards the absence of the Defendant's fingerprints on the gun or at the scene of the crime, Sgt. Gary Randy Winbush's testimony that glove prints were found would offer an explanation. And though there were witnesses who testified the Defendant's whereabouts were other than the St. Mary's rectory at the time of the homicide, there was one witness who

testified he saw the Defendant outside the rectory, and another, Elmore, who testified he overheard the Defendant admit to being at St. Mary's rectory. The jury chose not to believe the alibi witnesses.

[9] A witness who placed the Defendant at the scene of the crime shortly after the homicide, an admission by the Defendant that he was on the premises, the forcefully removed hair of the priest found on the Defendant's clothes, the Defendant's sale of the murder weapon to Evan Chapman the day after the murder, the inconsistent accounts of the Defendant's alibi witnesses and his own account of his whereabouts, Bendoski and Chapman's descriptions of the black man wearing a jacket and a little billed hat—considering all this in the light most favorable to the State, we are convinced a rational jury could find the Defendant guilty beyond a reasonable doubt.

II

[10, 11] The Defendant argues the trial court should have stricken Bendoski's testimony because the State failed to comply with his discovery motion "to state specifically ... any eyewitnesses of which the State has knowledge and who allegedly witnessed the crime." Prior to trial the State had made the Defendant aware of Bendoski's role as a witness and of the substance of his testimony. Bendoski's name and address appear on the indictment.[4] The State was not aware Bendoski could identify the Defendant until Bendoski saw the Defendant through the glass of the court room door during the trial. The State provided the Defendant with a copy of a police report wherein Bendoski's statement was recorded in narrative form. The evidence shows the State provided the Defendant with as much information as it had before trial. Moreover, Bendoski was not an eyewitness to the crime. *Cf. Pannell v. Sovereign Camp, W.O.W.*, 171 Tenn. 255, 102 S.W.2d 50 (1937). He only saw the Defendant at the dumpster after the crime had been committed. And so the State's response to the Defendant's discovery motion, stating "[T]he State has no knowledge of eyewitnesses to this murder," was a proper and correct response. The Defendant was not unfairly surprised by Bendoski's in-court identification.

[12] The Defendant contends his Sixth Amendment right to the effective assistance of counsel was abridged by the trial court's denying his motion for funds to secure the assistance of an expert in the field of hair analysis. The United States Supreme Court, in *United States ex rel. Smith v. Baldi*, 344 U.S. 561, 73 S.Ct. 391, 97 L.Ed. 549 (1953), held that a state is under no federal constitutional obligation to provide expert pre-trial assistance to an indigent defendant. The defendant, in *Baldi*, requested that the trial court appoint him a psychiatrist for a pre-trial examination. In upholding the trial court's refusal[5] to do so, the Court stated, "Psychiatrists testified. That suffices." 344 U.S. at 568, 73 S.Ct. at 394.

We have held this state's constitution preserves no such right. *Graham v. State*, 547 S.W.2d 531 (Tenn.1977). The Defendant points to, and our research turns up, no statute which would grant an indigent criminal defendant a right to this assistance. Although the Defendant "urge[s] this Court to adopt a rule of law allowing an indigent defendant funds for expert assistance," we decline to do so. "Essentially this is a matter that addresses itself to the judgment and discretion of the legislature. Thus far it has not seen fit to provide such services to indigent defendants." *Graham*, 547 S.W.2d at 536.

[13, 14] As his seventh issue for review, the Defendant argues the trial court erred in declaring Sgt. Gary Randy Winbush an expert in the field of fingerprint analysis. We find no error in the ruling. The qualification of an expert witness is a matter

4. At page 44 of Defendant's brief, he acknowledges he had sufficient time to investigate the witnesses listed in the indictment.

5. There was some factual question in *Baldi* about whether the Defendant properly moved the court for the expert assistance.

within the sound discretion of the trial court, and a decision on the matter will not be reversed on appeal absent a clear abuse of such discretion. *Murray v. State*, 214 Tenn. 51, 377 S.W.2d 918 (1964). Winbush was graduated from Jackson State Junior College. He was also a graduate of the Institute of Applied Science (a one-year correspondence course), the Advanced Latent Fingerprint School, taught by the FBI (a three-week course), and the TBI Law Enforcement Academy's Fingerprint School, taught by the FBI (a two-week course). He has attended various seminars organized by law enforcement agencies specializing in the area of fingerprint analysis, and has worked as a fingerprint examiner for more than six years. It is unclear to us what more experience the Defendant would require. Quite frankly, we are at a loss as to the importance of this issue, since Winbush testified the Defendant's fingerprints were found in no relevant places.

III

Upon the Defendant's arrest on Sunday May 17, 1981, he was taken immediately to the City Police Station in Jackson, Tennessee, where he was read his rights guaranteed by the federal constitution and acknowledged in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). He waived his rights and was interviewed by officer Holt of the department. This interview was taped and later transcribed. The Defendant's handwritten signature does not appear on the transcription. A signed waiver and a redacted [6] transcript of the interview were admitted into evidence over the Defendant's objection that the statement did not bear the Defendant's signature, that it was irrelevant, and that there was no proof the tape and the transcript were what they purported to be.

[15–17] The Defendant presented alibi witnesses to account for his whereabouts after his arrival in Jackson around May 12th. The part of the transcript in which the Defendant tells the interviewing officer of his movements about the city after coming to Jackson was read in open court as evidence for the State's case. The use of the statement in this case was for the purpose of showing the inconsistency between the Defendant's statement and the statements of the alibi witnesses. There was no error in admitting the statement. Although there is some limitation on the Defendant's placing his own statement into evidence, such statements being self-serving and lacking any guarantee of testimonial trustworthiness, *Hall v. State*, 552 S.W.2d 417 (Tenn.Cr.App.1977), there is no similar limitation on the State's offering a defendant's declaration which was freely given. *Johnson v. State*, 598 S.W.2d 803 (Tenn.Cr.App.1979). And it is because the Defendant's statement was freely given, with full knowledge of his right to an attorney and his right to remain silent, that there is no violation of his Fifth Amendment privilege against self incrimination.

The Defendant contends the trial court erred in denying his motion in limine to exclude the expert testimony of FBI agent Malone concerning his finding after analyzing the hair samples given him. Defense counsel objected to the admission of this testimony on the grounds that the prejudicial impact of this testimony outweighed the probative value in violation of due process, and that the testimony of the agent necessarily constituted speculation. The Defendant cites *United States v. Brady*, 595 F.2d 359 (6th Cir.1979), and *United States v. Brown*, 557 F.2d 541 (6th Cir.1977), in support of his contention. These cases set forth a four-prong test for determining the admissibility of expert testimony. *Brady* and *Brown* require that the witness be an expert, that the subject matter of the witness's testimony be proper, that the subject matter of the witness's testimony conform to a generally accepted explanatory theory, and that the probative value of the witness's testimony outweigh its prejudicial ef-

6. Redaction removed references to William's recent escape from a correctional institution and to the murder of Lt. Cox in Memphis, which resulted in his conviction of first degree murder in Shelby County.

fect. The Defendant argues the last two tests are not met.

[18] We agree with the State that the testimony under attack here was highly probative to establish the fact of the Defendant's identity as the perpetrator of the crime. And although Malone testified that hair analysis does not provide a positive personal identification, such as fingerprint analysis, he testified it would be highly unlikely that the hair from any two persons will exhibit the same characteristics. However, if the hair from two individuals matches, it would also be highly unlikely that both individuals would be in a position to deposit their hair in the same place. It was for the jury to give the testimony as much weight as it thought the testimony merited. The Defendant's argument stresses the unreliability of the hair analysis tests. Yet, in *State v. Melson*, 638 S.W.2d 342 (Tenn.1982), we considered the reliability of this test and found it satisfied the criteria of *Brady* and *Brown*.

IV

The Defendant maintains two errors were committed during the sentencing phase of his trial. During closing arguments, Mr. Hymers, counsel for the State, argued, in part, as follows:

> The Court has instructed that we are considering paragraphs two and seven [of T.C.A. 39-2-203(i)]. . . . As to paragraph Two, the Defendant was previously convicted of one or more felonies other than the present charge which involved the use of threat or violence to the person.
>
> Now, Exhibit No. [1], has to do with the Davidson County case, and that reflects that a plea of guilty was entered on January 4, 1979, to Second Degree Murder charged in which it was charged that Tera L. Wedlaw had been murdered. The Defendant pled guilty and a sentence of ten years was given. Exhibit No. 2, has to do with a murder conviction in the first degree in which the death penalty was inflicted, and that has to do with the judgment that was rendered on 11-6-81, in Shelby County, at Memphis, Tennessee, and it charged Laron Ronald Williams with murdering a police officer in the line of duty in that county.

Mr. Woodall, co-counsel for the State, argued, in part, as follows:

> [The Defendant] spent five minutes deliberately, and with malice aforethought striking down Father John J. Jackson in the rectory house; and on November 6th, 1981, was found guilty for the deliberate, premeditated murder of Lt. Edward Cox of the Memphis Police Department when he took a gun and blew his brains out, and prior to that he was found guilty in Davidson County, Tennessee, of the murder of a young lady.

There was no objection made at any point during the State's arguments. There was no objection made at the close of the arguments.

[19, 20] The first objection made about the impropriety of the State's arguments is made before this Court. Here, the Defendant objects to the state's mentioning the prior death sentence and to Mr. Woodall's phrase "blew his brains out." As there is no evidence in the record about the details of the killing of officer Cox, Mr. Woodall's comment was improper. *See Russell v. State*, 532 S.W.2d 268 (Tenn.1976). This error does not require a reversal of the Defendant's sentence, however, as he has shown no resulting prejudice. In a consideration of whether improper conduct on the part of the State requires reversal, a court may look to several factors, such as the effect of curative measures taken by the trial court, the intent of the prosecution, the cumulative effect of the improper conduct and any other errors in the record, and the relative strength of the case. *See Judge v. State*, 539 S.W.2d 340 (Tenn.Cr.App.1976). Our review of the State's arguments convinces us that counsel were otherwise careful in their choice of words, considering the facts of this case are lamentable. The comment was isolated and Mr. Woodall's argument and Mr. Hymer's argument were in all other respects temperate.

[21, 22] As regards Mr. Hymers' comment about the Defendant's prior death sentence, we reach the same result. The State's counsel argued only from the evidence admitted at trial. The Defendant stipulated to his past murder convictions and the sentences imposed for those convictions. If the Defendant objected to this information being commented upon, he should not have agreed to the sentences being made a part of the record. We wish to point out, however, that the fact of a pending prior death sentence should not be admitted as evidence except by agreement.

[23–26] The fact of the prior murder convictions coupled with the present first degree murder conviction is statutorily sufficient to support a sentence of death. On review, it is not for this Court to speculate about the thought processes of the jury. We review the evidence and the statutory requirements and insure that the jury has been instructed properly on the law. The essence of the Defendant's argument is that even in the face of the past murder convictions, there is some chance, however slim, that the jury might have given him life had it not known of his past sentence of death. But such an argument ignores the new death statute's goal of eliminating capriciousness in the deliberating process. While the jury has the responsibility of determining the sentence, its decision is guided by the statute. It is only after finding at least one of the aggravating circumstances that the death penalty may be given. In the present case the Defendant presented no evidence of mitigating circumstances, and the aggravating circumstances were strong.

V

The Defendant challenges the constitutionality of the death penalty statute on several grounds. All the arguments, however, have been reviewed by this Court in past decisions, and there is no merit to them. The death penalty statute is constitutional. *Houston v. State*, 593 S.W.2d 267 (Tenn.1980), *cert. denied*, 449 U.S. 891, 101 S.Ct. 251, 66 L.Ed.2d 117 (1980). *State v. Pritchett*, 621 S.W.2d 127 (Tenn.1981); *State v. Melson*, 638 S.W.2d 342 (Tenn. 1982); *State v. Simon*, 635 S.W.2d 498 (Tenn.1982).

The Defendant's convictions of first degree murder and first degree burglary are affirmed. The sentence of not less than ten nor more than fifteen years in the state penitentiary for burglary and the sentence of death for murder in the first degree are affirmed. The date of execution is fixed for November 29, 1983, unless stayed or otherwise ordered by this Court or other proper authority. Costs are assessed to the Defendant.

FONES, C.J., HARBISON, J., and RUSSELL, Special Justice, concur.

BROCK, J., concurs in part and dissents in part.

BROCK, J., concurring in part and dissenting in part.

For the reasons stated in my dissent in *State v. Dicks*, Tenn., 615 S.W.2d 126 (1981), I would hold that the death penalty is unconstitutional; but, I concur in all other respects.

STATE of Tennessee, Appellee,

v.

Ronald Richard HARRIES, Appellant.

Supreme Court of Tennessee,
at Knoxville.

Sept. 19, 1983.

Defendant was convicted before the Criminal Court, Sullivan County, Edgar P. Calhoun, J., of murder in the first degree, and he appealed. The Supreme Court, Fones, C.J., held that: (1) jury could have found that neither defendant's actions nor his intent or motivation were impaired by

Degree Murder charge in which it was charged that Tera L. Wedlaw had been murdered. The Defendant plead guilty and a sentence of ten years was given. Exhibit No. 2, has to do with a murder conviction in the first degree in which the death penalty was inflicted, and that has to do with the judgment that was rendered on 11-6-81, in Shelby County, at Memphis Tennessee, and it charged Laron Ronald Williams with murdering a police officer in the line of duty in that county. Now Paragraph seven, the murder was committed while the Defendant was engaged in committing or was an accomplice to the commission of or was attempting to commit or was fleeing after committing or attempting to commit any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, air craft piracy, or unlawful throwing,placing, or discharging of a destructive device or bomb.

It is the theory of the State that if a person will kill once, that person finds the next killing to be much easier. It is my obligation and it is the duty of the State to protect its citizens. It is my duty and obligation when a matter of this consequence occurs to request of you as Jurors that you inflict the punishment of death to this Defendant.

Now, this matter of this request that I referred to was not made in haste, in our office we

conferred with all the men and the prosecutors in the office, and then we elected to take this step. And I want you to know it wasn't a hasty decision. You consider the background of the Defendant, you consider the nature of the crime, and you consider what prior offenses, felonies, and violence that have taken place. Was it money, was it lust, was it revenge, was drugs involved, drinking, was it made to cover up a crime; and in this case it was the murder to cover up a crime. Did the victim have a chance? He was five feet six inches, did he have a chance?

Now, we have a Defendant who has by his own words admitted that he murdered a woman in Davidson County. He was found guilty in Shelby County of Murder in the First Degree, killing a police officer in the line of duty. That is two murders. Now, you have found him guilty of a third murder, you know all the facts.

Speaking for the State of Tennessee I say he has forfeited his right to live. I want you to think of the victims that have gone already to their death. It is your job to make sure there are no more victims who die by the hands of this man. If it was your wife, your brother, your sister, I know you would weigh this matter. We are deadly serious, I am asking you as the District Attorney General, and I look around this room

committing another felony, has forfeited his right to live.

Oh, yes, give me the Mosaic Code of an eye for an eye, a tooth for a tooth, and render unto Caesar that which is Caesars, and to God that which is God's. Don't ask me where the fingerprints are, the footprints are, because Ladies and Gentlemen, we spent a whole week giving this Defendant a fair and impartial trial. He spent five minutes deliberately, premeditatedly, and with malice aforethought striking down Father John J. Jackson in the Rectory house; and on November 6th, 1981, was found guilty for the deliberate, premeditated murder of Lt. Edward Cox of the Memphis Police Department when he took a gun and blew his brains out, and prior to that he was found guilty in Davidson County, Tennessee, of the murder of a young lady. They didn't get a fair trial, they did not have the State of Tennessee behind them, they did not have a battery of lawyers with them, they did not have anyone to point the accusing finger at him and say this or that, they stood alone, and not only in this case does Father John J. Jackson call to you from beyond this earth, but so does Lt. Cox, and so does Ms. Whitlowe, and they say please, let's stop this man where he is, let's stand up and do that which our Legislature has deemed appropriate under these

STATE OF TENNESSEE

MAURY COUNTY CIRCUIT

VS.

CASE NO. 1034

LARON RONALD WILLIAMS

I, do hereby certify that the within

Judgment of Davidson County Circuit Court

was filed as Exhibit No. 1 at the sentencing/hearing of this cause, and the same is hereby authenticated as a pa.t of the Transcript of Evidence.

This 29th day of July 1982.

James L. Weatherford

JAMES L. WEATHERFORD
Circuit Judge

COURT MET PURSUANT TO ADJOURNMENT, PRESENT AND PRESIDING THE HONORABLE RAYMOND H. LEATHERS, JUDGE OF DIVISION ONE OF THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE, WHEN THE FOLLOWING PROCEEDINGS WERE HAD, TO-WIT:

THURSDAY, JANUARY 4, 1979

STATE OF TENNESSEE

C-2574
JURY WAIVED
WRITTEN
PLEA OF
GUILTY TO
2ND DEG.
MURDER
10 YRS.
PEN.
JAIL CREDIT
WAIVED APPEAL

VS. SECOND DEGREE MURDER

LARON WILLIAMS

CAME THE ATTORNEY GENERAL WHO PROSECUTES FOR THE STATE AND THE DEFENDANT IN PERSON, BEING REPRESENTED BY COUNSEL.

THEREUPON, THE DEFENDANT, BY HIS COUNSEL, HAVING FILED A WRITTEN MOTION TO WAIVE A TRIAL BY JURY IN ACCORDANCE WITH SECTION 40-2504, T. C. A., BEING SIGNED BY THE DEFENDANT AND HIS ATTORNEY AND CONCURRED IN BY THE ATTORNEY GENERAL AND GRANTED BY THE COURT THIS CAUSE CAME ON TO BE HEARD BY THE COURT WITHOUT THE INTERVENTION OF A JURY UPON A WRITTEN PLEA OF GUILTY TO SECOND DEGREE MURDER AND THE DEFENDANT BEING DULY SWORN IN OPEN COURT AND TESTIFYING AND PLEADING GUILTY TO SECOND DEGREE MURDER AND UPON THE EVIDENCE INTRODUCED AND THE STATEMENT OF THE ATTORNEY GENERAL THE COURT FINDS THE DEFENDANT GUILTY OF SECOND DEGREE MURDER.

IT IS, THEREFORE, CONSIDERED BY THE COURT THAT THE DEFENDANT FOR HIS OFFENSE OF SECOND DEGREE MURDER SHALL BE CONFINED AT HARD LABOR IN THE STATE PENITENTIARY FOR A PERIOD OF TEN YEARS, COMMENCING ON THE DATE OF HIS DELIVERY TO THE KEEPER THEREOF, SUBJECT TO THE RULES AND REGULATIONS OF SAID INSTITUTION.

THEREUPON, THE DEFENDANT AND HIS ATTORNEY SIGNED A WRITTEN WAIVER OF HIS RIGHT TO FILE A MOTION FOR A NEW TRIAL AND THEREFORE WAIVES HIS RIGHTS OF REVIEW OF THIS CONVICTION IN ANY APPELLATE COURT.

THAT HE PAY THE COSTS OF THIS PROSECUTION FOR WHICH EXECUTION WILL ISSUE, AND THAT PURSUANT TO SECTION 16(A) OF PUBLIC CHAPTER 736 OF THE PUBLIC ACTS OF 1976, THE COURT FINDS THAT THIS IS A CRIME AGAINST PERSON OR PROPERTY AND THE DEFENDANT IS THEREFORE ASSESSED AN ADDITIONAL $21.00 COURT COSTS.

THAT HE BE ALLOWED CREDIT FOR HIS JAIL TIME FROM NOVEMBER 3, 1977 TO DATE.

(RECOMMENDATION OF THE ATTORNEY GENERAL)

MR. MICHAEL ENGLE AND MR. JOHN WADE, ATTORNEYS FOR DEFENDANT

MR. W. EDWARD BARNARD, ASSISTANT ATTORNEY GENERAL FOR THE STATE

ORDERED THAT COURT STAND ADJOURNED UNTIL IN THE MORNING AT NINE O'CLOCK.

/S/ RAYMOND H. LEATHERS

RAYMOND H. LEATHERS, JUDGE

STATE OF TENNESSEE

Filed 1-4-79
B Lennon

IN THE CRIMINAL COURT OF DAVIDSON COUNTY

STATE OF TENNESSEE)
)
VS.) Docket No. C-2574
)
LaRon Williams)
Defendant

PLEA OF GUILTY

The defendant, appearing in person in this cause, and having been fully advised by the court of the crime charged against him, the punishment which could be meted out if the defendant is found guilty and of his constitutional rights therein, hereby voluntarily pleads guilty to the offense of Murder 2nd Deg. 10 yrs Pen

The defendant also states to the court that his Attorney being present, Honorable Mike Engle, has fully informed him of all of his rights and that after a full explanation of these rights, the defendant informed his Attorney that he wanted to voluntarily enter a plea of guilty, and to this decision of the defendant, said Attorney agrees.

This the 4 day of Jan., 1979.

Approved:

LaRon R. Williams
Defendant

Attorney for Defendant

Filed -
1-4-79
B Lenox

IN THE CRIMINAL COURT OF DAVIDSON COUNTY

STATE OF TENNESSEE

VS.

Docket No. C-2574

Lyron Williams
DEFENDANT

WAIVER OF APPEAL

Comes the defendant in person and with counsel and states to the Court that he was convicted of Murder 2nd 10 yrs Pen

on 1-4, 1979, and he does not desire to appeal his case to the Criminal Court of Appeals of Tennessee. He states that this decision has been made by him voluntarily after a full and complete discussion of same with his attorney.

By execution of this waiver of appeal, he voluntarily waives his right to file a motion for a new trial and therefore waives his rights of review of this conviction in any Appellate Court.

The defendant states that he fully understands his right to appeal his case and that he, nevertheless, desires not to appeal. His attorney agrees that defendant has no basis for appeal as there are no errors in the record.

This the 4 day of Jan., 1979.

La Ron R. Williams
Defendant

Attorney for defendant

Filed
1-4-79
B Lemm

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE

DIVISION One

STATE OF TENNESSEE NO. C-2574

VS.

Jason Williams OFFENSE Murder 2nd

MOTION FOR WAIVER OF JURY

Pursuant to the authority granted by Section 40-2504 T. C. A., a motion has been seasonably made by the defendant to waive a trial by jury, which motion the court is pleased to grant.

The defendant makes oath in due form that he has been advised by counsel of the constitutional right of every defendant to a trial by jury, but through this motion, concurred in by the District Attorney General and counsel for the defense, desires to waive said privilege.

Attorney for defendant

Jason R. Williams
Defendant

District Attorney General

Sworn to and subscribed to before me this

4th day of Jan, 19 79.

B Lemm D. C.

No. C 2574 1

STATE OF TENNESSEE

vs. MURDER

Laron Ronald Williams

Jessie Mae McDonald Prosecutor.

~~SUMMON WITNESSES FOR THE STATE:~~

R.C. Jackson

Bobby Green

Witnesses sworn in open Court during and sent before the Grand Jury to testify in the above cause, this 13th day of April 19 78

Charles H. Wiles
Foreman of Grand Jury.

THOMAS H. SHRIVER
Attorney-General

a True Bill.
Charles H. Wiles Foreman

SUMMON WITNESSES FOR THE STATE:

Comp.#77-181309

Jessie Mae McDonald, 3324 22nd Street, Tampa, Florida

T.McElroy,Metro
Morris McKenzie, Metro
Bobby Green, Metro
Ronnie Craig, Metro
Tony Reed, 320 Welch Rd., Pagoda Apts.,P-4
Johnny Hunter, Metro ID
Dr.T.E.Simpkins, Med.Examiner, 262-2527
Edward D. Richardson, 510 Gay St.
R.C.Jackson,Metro
Jimmie D. Hollifield, 830 Glastonbury Rd., Apt.219 367-9178
Special Agent Fred Wallace, F.B.I.Laboratory, J.Edgar Hoover Bldg., Washington, D.C.:Attn: Hair & Fibers Section
Janis Ellis.

RECEIVED
APR 20 1978
EARL HAWKINS
CLERK

State of Tennessee, Davidson County

January Term of the Criminal Court, 1978

The Grand Jurors for the State of Tennessee, duly elected, impaneled, sworn and charged to inquire for the body of the County of Davidson, and State aforesaid, upon their oath aforesaid, present:

That Laron Ronald Williams

~~of the County~~, *heretofore, to-wit: On the* day of October, 1977, *with force and arms, in the County aforesaid, unlawfully, feloniously, willfully, deliberately, premeditatedly and maliciously, did make an assault upon the body of one* Terra L. Wedlaw

and h er *the said* Terra L. Wedlaw

he the said Laron Ronald Williams

then and there did unlawfully, feloniously, willfully, deliberately, premeditatedly, and of h is *malice aforethought, kill and murder, against the peace and dignity of the State.*

Thom H. Shriver, Attorney General.

STATE OF TENNESSEE

MAURY COUNTY CIRCUIT

VS.

CASE NO. 1034

LARON RONALD WILLIAMS

I, do hereby certify that the within Judgment of Shelby County Circuit Court sentencing was filed as Exhibit No. 2 at the hearing of this cause, and the same is hereby authenticated as a part of the Transcript of Evidence.

This 24th day of July 1982.

James L. Weatherford

JAMES L. WEATHERFORD
Circuit Judge

STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Court of the 15th Judicial Circuit at Memphis, do hereby certify that the forgoing ONE (1) pages of writing contain a full, complete, true and perfect copy of CRIMINAL COURT MINUTE ENTRY

LARON RONALD WILLIAMS

in the case of:

STATE OF TENNESSEE
vs.
LARON RONALD WILLIAMS

Docket No. B79700

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office, and that I am the Custodian of said records and that all entries are presently under my care, custody and control.

WITNESS my hand and the seal of said Court, at office in Memphis, this, the 3 day of DECEMBER 19 81

J. A. BLACKWELL, Clerk

SEAL

By Linda W. Clark D. C.

FRIDAY, NOVEMBER 6, 1981

State

STATE OF TENNESSEE
VS - 875700
LARON RONALD WILLIAMS

MURDER FIRST DEGREE

Comes the Attorney General on the part of the State and the defendant in proper person and by counsel of record, MR. ED THOMPSON, P.D. and MR. ROBERT JONES, P.D. Whereupon there comes into open Court under the charge of their proper Officers, the same Jury heretofore selected to try the above cause. Whereupon the Court proceeds with the hearing of testimony as to the SECOND PART of the trial, as to the punishment of the defendant heretofore found GUILTY of MURDER IN THE FIRST DEGREE IN THE FIRST PART OF THE INDICTMENT, and upon completion of the second part of the trial as to the punishment of the defendant, the Jury upon their oath do say:

(1) WE, THE JURY, UNANIMOUSLY FIND THE FOLLOWING LISTED STATUTORY AGGRAVATED CIRCUMSTANCE OR CIRCUMSTANCES:

(2) THE DEFENDANT WAS PREVIOUSLY CONVICTED OF ONE OR MORE FELONIES, OTHER THAN THE PRESENT CHARGE, WHICH INVOLVE THE USE OF THREAT OR VIOLENCE TO THE PERSON.

(6) THE MURDER WAS COMMITTED FOR THE PURPOSE OF AVOIDING, INTERFERING WITH, OR PREVENTING A LAWFUL ARREST OR PROSECUTION OF THE DEFENDANT OR ANOTHER.

(8) THE MURDER WAS COMMITTED BY THE DEFENDANT WHILE HE WAS IN LAWFUL CUSTODY OR IN A PLACE OF LAWFUL CONFINEMENT OR DURING HIS ESCAPE FROM LAWFUL CUSTODY OR FROM A PLACE OF LAWFUL CONFINEMENT.

(9) THE MURDER WAS COMMITTED AGAINST ANY PEACE OFFICER, CORRECTIONS OFFICIAL, CORRECTIONS EMPLOYEE OR FIREMAN, AND WAS ENGAGED IN THE PERFORMANCE OF THIS DUTIES, AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT SUCH VICTIM WAS A PEACE OFFICER, CORRECTIONS OFFICIAL, CORRECTIONS EMPLOYEE OR FIREMAN, ENGAGED IN THE PERFORMANCE OF HIS DUTIES.

(2) WE, THE JURY, UNANIMOUSLY FIND THAT THERE ARE NOT MITIGATING CIRCUMSTANCES SUFFICIENTLY SUBSTANTIAL TO OUTWEIGH THE STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES SO LISTED ABOVE.

(3) THEREFORE, WE, THE JURY, UNANIMOUSLY FIND THAT THE PUNISHMENT FOR THE DEFENDANT, LARON RONALD WILLIAMS SHALL BE DEATH.

Thereupon the Court proceeds to pass sentence as to the defendant LARON RONALD WILLIAMS, which is that: After a fair and impartial trial and the Jury having found you GUILTY of MURDER IN THE FIRST DEGREE AS CHARGED IN THE FIRST PART OF THE INDICTMENT, and further the Jury having fixed your punishment at DEATH in the SECOND PART of the trial, it is the Judgment of this Court that you be taken by the Sheriff and removed to jail and at the earliest convenience be delivered to the WARDEN OF THE STATE PENITENTIARY, therein to be confined until MARCH 15, 1982, when you shall be put to death by electrocution on said date between the hours fixed by law, and that you be shocked by a sufficient current of electricity until you are dead, and may God have mercy on your soul, and further pursuant to Section 40-3207, T.C.A., you are assessed an additional $21.00 Court costs, notwithstanding the regular costs of this prosecution, and further that you pay the TOTAL costs of this prosecution, for which let mittimus and execution issue. Thereupon, the defendant, through his counsel of record moves the Court for a Motion for New Trial, which Motion is set for hearing on DECEMBER 3, 1981.

/s/ Joseph B. McCartle
JUDGE

I HEREBY CERTIFY THE ABOVE
AS A TRUE AND CORRECT MINUTE
ENTRY AS IT APPEARS
MINUTE BO. 16 DIV 8
DATE 11-6 1981
JAMES A. FREW D. C.

Office - Supreme Court, U.S.
FILED
FEB 6 1984
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-6016

LARON WILLIAMS,

Petitioner,

V.

STATE OF TENNESSEE,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF TENNESSEE

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT A. GRUNOW
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OF COUNSEL:

WILLIAM M. LEECH, JR.
ATTORNEY GENERAL & REPORTER
STATE OF TENNESSEE

QUESTIONS PRESENTED FOR REVIEW

I. Whether the trial court erred in denying the petitioner's motion for funds to secure the assistance of an expert in the field of hair analysis.

II. Whether the trial court properly monitored the admission of evidence and the arguments of counsel at the punishment phase of the trial.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-6016

LARON WILLIAMS,

Petitioner,

V.

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF TENNESSEE

The respondent respectfully submits that the petition for writ of certiorari filed in this cause should be denied.

OPINIONS BELOW

On April 23, 1982, the trial court denied the petitioner's motion for a new trial. The judgment of the trial court was affirmed by the Supreme Court of Tennessee on August 29, 1983. That opinion is officially reported at 657 S.W.2d 405.

The petitioner filed a petition to rehear with the Supreme Court of Tennessee on September 8, 1983. The petitioner's petition to rehear was summarily denied on October 3, 1983.

JURISDICTION

The petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1257(3). However, the respondent submits that this record does not present a substantial federal question.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Sixth Amendment, United States Constitution:

> In all criminal prosections, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

The Eighth Amendment, United States Constitution:

> . . . (N)or cruel and unusual punishments inflicted.

The Fourteenth Amendment, United States Constitution:

> . . . No state shall . . . deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Tenn. Code Ann. § 39-2-202:

> (a) Every murder perpetrated by means of poison, lying in wait, or by other kind of willful, deliberate, malicious, and premeditated killing . . . is murder in the first degree.
>
> (b) A person convicted of murder in the first degree shall be punished by death or by imprisonment for life.

Tenn. Code Ann. § 39-2-203:

> (a) Upon a trial for murder in the first degree, should the jury find the defendant guilty of murder in the first degree, they shall not fix punishment as a part of their verdict, but the jury shall fix the punishment in a separate sentencing hearing to determine whether the defendant shall be sentenced to death or life imprisonment. The separate sentencing hearing shall be conducted as soon as practicable before the same jury that determined guilt . . .
>
> (c) In the sentencing procedure, evidence may be presented as to any matter that the court deems relevant to punishment and may include, but not be limited to, the nature and circumstances of the crime; the defendant's character, background history, and physical condition; any evidence tending to establish or rebut the aggravating circumstances . . .; and any evidence tending to establish or rebut any mitigating factors . . .
>
> (g) If the jury unanimously determines that at least one statutory aggravating circumstance or several statutory aggravating circumstances have been proved by the state beyond a reasonable doubt, and said circumstances are not outweighed by any mitigating circumstances, the sentence shall be death . . .

(i) No death penalty shall be imposed but upon a unanimous finding, as heretofore indicated, of one or more of the statutory aggravating circumstances, which shall be limited to the following . . . :

(2) The defendant was previously convicted of one or more felonies, other than the present charge, which involved the use or threat of violence to the person;

(7) The murder was committed while the defendant was engaged in committing . . . any . . . burglary . . .

STATEMENT OF THE CASE[1]

In its May term of 1981, the Madison County Grand Jury indicted the petitioner on charges of first degree burglary, first degree murder, and employing a firearm during the commission of a felony. (I, 3-4).

On November 10, 1981, the respondent filed a petition to strike the petitioner's motion for the appointment of an independent expert in the field of hair analysis. (II, 12-16). On November 27, 1981, the petitioner filed a motion for funds to secure the assistance of an expert in the field of hair analysis. (II, 17-19). The respondent filed a petition to strike the petitioner's motion for funds on December 1, 1981. (II, 20-22). The trial court denied the petitioner's motion for funds on December 3, 1981, with leave to renew the motion should the petitioner locate an expert without delaying the trial. (III, 12-13).

On December 8, 1981, the petitioner filed a motion *in limine* to prohibit the admission into evidence of the testimony of FBI Agent Michael Malone concerning the results of hair analysis performed by him. (II, 23-24).

A trial was had in this cause on December 8 through December 14, 1981. The jury returned a verdict finding the petitioner guilty of first degree burglary; punishment was assessed at not less than ten (10) years, nor more than fifteen (15) years incarceration in the state penitentiary. The jury also found the petitioner

---

[1] References to the record will be indicated by volume and page number. Volume I consists of pleadings; Volume II consists of the supplemental pleadings; Volume III consists of the pre-trial motion hearing; Volumes IV-VIII consits of the proof adduced at trial; and Volume IX consists partially of the proof adduced at trial and partially of the proof adduced at the sentencing hearing.

guilty of first degree murder; punishment was assessed at death by electrocution. (I, 24-25).

On January 11, 1982, the petitioner filed a motion for a new trial. (I, 26-29). The respondent filed a response to the petitioner's motion for a new trial on January 18, 1982. (I, 30-31). The trial court overruled the petitioner's motion for a new trial on April 23, 1982; an execution date of July 14, 1982, was set. (I, 32-33).

On April 20, 1982, the petitioner filed a notice of appeal. (I, 34-35). On May 28, 1982, the Honorable William J. Harbison, Chief Justice of the Tennessee Supreme Court, granted the petitioner's motion for a stay of execution pending further orders of the Court. (I, 39). Following the issuance of the opinion of the Tennessee Supreme Court, the Honorable Frank F. Drowota, III, Justice of the Tennessee Supreme Court, granted the petitioner's motion for a stay of execution pending further orders of the Court.

The petitioner timely filed the instant petition for a writ of certiorari with this Court.

STATEMENT OF THE FACTS

I. THE GUILT PHASE OF THE TRIAL

A. The Respondent's Proof

Louise Hawkins, an acquaintance of the petitioner, testified that she saw the petitioner on May 12, 1981, in Memphis. The two engaged in some sort of argument, with the petitioner hitting her in the mouth. After hitting Hawkins, the petitioner told her that he wanted her to take him to Jackson. (IV, 55-57). Hawkins, her niece, and the petitioner left Memphis around 8:00 p.m., arriving in Jackson some two hours later. (IV, 57).

Upon arriving in Jackson, Hawkins drove the petitioner to the Regency Inn at the petitioner's request. (IV, 58). With money provided by the petitioner, Hawkins rented Room 24 for a period of one week. Hawkins listed her Memphis address and her sister's automobile license number on the motel registration card. (IV, 58-60). While Hawkins was registering for the petitioner, the petitioner remained outside in the car. (IV, 58-59).

Hawkins obtained the room key and gave it to the petitioner. She then accompanied the petitioner, who was carrying a large grocery bag, into Room 24. After staying approximately 30 minutes, Hawkins and her niece returned to Memphis. (IV, 62).

Sgt. L. B. Gooch of the Memphis Police Department testified that he was responsible for recording the serial numbers of weapons belonging to the Memphis Police Department at the time of the instant crime. (IV, 65). Sgt. Gooch identified State's Exhibit No. 3, a .38 caliber Smith & Wesson revolver, serial number K516136, as having the same serial number as that of a police revolver belonging to the Memphis Police Department. (IV, 71-73).

Gooch further testified that for a period of time after May 17, 1981, the revolver was completely out of the possession of the Memphis Police Department and that he personally did not know where the gun was while it was missing. (IV, 73-74).

Robert Duffey, a voluntary bookkeeper for St. Mary's Parish in Jackson, Tennessee, testified that the victim, Father John Jay Jackson, was to have conducted a mass at 8:10 a.m. on the morning of May 15, 1981. When the priest had not appeared by 8:20 a.m., Duffey unlocked the back door to St. Mary's Rectory with his key and went inside. (IV, 76-77). He discovered the dead Father Jackson lying on the floor of the den four feet inside the door. (IV, 77-78). Duffey noticed that the priest had blood on his neck, his pockets had been pulled out, and the den was in a state of disarray. (IV, 78-79).

Duffey ran outside the rectory and notified the principal, Sister Catherine DeRicci, of his discovery. He then telephoned the police, using the "911" emergency number. Prior to the arrival of the police, Duffey, Sister DeRicci, and Mrs. Dale Smith turned the priest's body over so that it was lying on its back. (IV, 79-81). Duffey directed the police, who arrived on the scene very quickly, to the den and was present at the time the police sealed off the room. (IV, 79).

Captain Barney E. Crews, Jr., a captain with the Jackson Police Department, responded to a call at St. Mary's Parish on the morning of May 15, 1981. In the course of his duties, he took various photographs of the rectory and St. Mary's Manor, a high rise apartment complex which is located next to the church. (IV, 83). A week later, he shot aerial photographs and slides from a Tennessee Highway Patrol helicopter. (IV, 83).

During his investigation, Crews observed that someone had gained entry to the rectory by breaking out one of the sliding glass doors which opened onto a screened-in porch. (IV, 85-86). He also observed footprints in the ground on the southwest corner of the building. (IV, 86). Crews followed the footprints across a ditch to a dumpster located at the northwest corner of St. Mary's Manor and found footprints surrounding the dumpster. (IV, 86-87). Crews also discovered tracks leading from the dumpster, going across the interstate, and going up to Highway 45 Bypass to Watkins Tower (presently known as Commerce Tower). (IV, 87-88).

On cross-examination, Crews testified that the footprints which were found on the carport were photographed. The police also took an impression of the oil-stained footprint, which was a complete print, located on the carport. (IV, 89-90). Plaster casts were made of the footprints discovered at the corner of the rectory, at the dumpster, leading to St. Mary's Manor, and around the curve of the Manor. (IV, 90-91). In Crews' opinion, these footprints were the same. (IV, 91-92).

On re-direct examination, Crews testified that the tread of the shoes which made the oil-stained footprint on the carport matched the tread on the plaster casts. (IV, 93). However, one set of prints lifted from the carport was different from the prints captured on the plaster casts. (IV, 94).

John R. Formacka, an officer with the Jackson Police Department, was dispatched at 8:26 a.m. on May 15, 1981, to St. Mary's Rectory. After being directed to the den of the rectory, Formacka found the priest's body lying on its back. Based upon his observation of the body, Formacka testified that the victim, who

had a wound above his right temple, had obviously been deceased for some time. (IV, 98-99). Formacka immediately secured the crime scene and contacted the Criminal Investigation Division [hereinafter referred to as CID], who arrived within four minutes. (IV, 99).

As a result of information provided to the police department by Ed Bendowski, Formacka returned to the scene the following morning. In the parking lot of Watkins Tower, which is located across Highway 45 Bypass from St. Mary's, Formacka discovered a cardboard box. (IV, 100-01). Noticing footprints in the area which were similar to those found on the grounds of St. Mary's, Formacka did not pick up the box, but rather notified other officers who arrived on the scene and photographed the box. (IV, 102). A penny, a nickel and a small, round piece of cardboard were discovered inside the box. Although there was nothing to indicate that the coins came from the same source, Formacka testified that he noticed coins scattered on the floor of the hallway and the den of the rectory. (IV, 104-05).

On cross-examination, Formacka stated that children apparently play in the area surrounding the rectory and that he did not know whether the footprints which were discovered in the area had been made by children prior to the time the police arrived on the scene. (IV, 107-08). Formacka further testified that he observed a flower pot lying on the top of a coffee table in the den of the rectory; the flower pot had been turned on its side and the coffee table was at an angle. (IV, 105-07).

Ed Bendowski, a resident of St. Mary's Manor, testified that at 8:22 p.m. on the evening of May 14, 1981, he and his wife looked outside the window of a lounge at the manor, which faces Highway 45 Bypass,

and saw a car parked in the southwest corner of the parking lot of Watkins Tower. (IV, 114). After noting that it was unusual to see a car parked in that area after business hours, Bendowski and his wife proceeded to return to their apartment, which is located on the eighth floor of St. Mary's Manor, at 8:23 p.m. or 8:24 p.m. Before entering their apartment, they looked outside the hallway window and saw a tall, black man approach the dumpster located on the ground. This man, identified by Bendowski as being the petitioner, lifted up both of the lids to the dumpster, took a box out of the dumpster, reached under his belt or shirt and then placed something into the box. After the man looked around, he quickly proceeded toward the highway. (IV, 119, 126-27).

Bendowski further testified that at the time he saw the man at the dumpster, it was dusk. However, the area surrounding St. Mary's Manor, from the dumpster to the highway, is well lighted and was so illuminated at the time he saw the petitioner. (IV, 116-17). As Bendowski stood 50 to 55 feet from the ground and the dumpster was 50 to 60 feet from the building, he observed the man at the dumpster at an angle. (IV, 120).

The morning after seeing the man at the dumpster, Bendowski learned that something had happened at the rectory. After hearing this information, he reported what he had seen to the police. The police never made an attempt to ascertain whether he could identify the petitioner or anyone else from photographs. In addition, Bendowski never personally saw the petitioner's photograph in the newspaper or on television; he first realized that the man at the dumpster was the petitioner when he saw the petitioner through the window of the courtroom. (IV, 121-22). According to Bendowski, he held no doubt that the petitioner was the man he saw at the dumpster on the evening of May 14, 1981. (IV, 122).

On cross-examination, Bendowski testified that he watched the man for approximately four or five minutes. During that period of time, he saw the petitioner's face from the side on two or three occasions, some seven to eight seconds each time. When the petitioner walked around the dumpster, Bendowski was able to see the petitioner's face from the front. (IV, 134). Bendowski related that the man at the dumpster was wearing a jacket and a cap which were light colored and which matched. The cap had a bill on it of average length and was blue in color. The man at the dumpster also had on dark pants and dark shoes; Bendowski was unable to see what type of shoes they were. The petitioner, who had long, black hair at the time Bendowski saw him at the dumpster, appeared much the same at trial. (IV, 128A-128B).

Bendowski further stated that at the time he spoke with the CID officer on the morning of May 15, he told the officer that he could identify the man he saw at the dumpster. The officer did not respond to his assertion. (IV, 131-32). Although at no time was he given an opportunity to attempt to identify the man from photographs or a lineup, Bendowski did not call the police after the petitioner's arrest to tell them that he could identify the man at the dumpster. Bendowski did not notify the police because he did not want to become involved; rather, he was waiting for the police to come to him. (IV, 133).

Criminal Investigator George "Butch" Blanton of the Jackson Police Department participated in the investigation of the instant crime. On the morning the priest's body was discovered, Blanton was able to determine that entry to the rectory had been gained by someone breaking out the right panel of the sliding glass doors which lead into the den where the body was

found. (IV, 138-39). From the appearance of the den, a struggle had apparently occurred. In addition, the drawers of a desk which was located in the bedroom area of the rectory had been pulled out and thrown on top of the desk, with their contents in disarray. (IV, 143).

In examining the area outside the rectory, Blanton found a continuous trail of footprints which led from the rectory to the manner and across Highway 45 Bypass to the corner of the parking lot of Watkins Tower where the cardboard box was found. Blanton made plaster casts of some of these shoeprints. (IV, 1460 52). Blanton also prepared a diagram of the den where Father Jackson's body was found. (IV, 153-54).

On cross-examination, Blanton testified that with the exception of the footprint found at the corner of the rectory, the other footprints appeared to have been made by tennis shoes. (IV, 160). Although the police recovered a pair of tennis shoes from the petitioner, Blanton did not attempt to compare the petitioner's shoes with the prints which were found at the scene. In addition, the police were unable to locate the tennis shoes which they believed made the footprints. (V, 164-65).

Blanton further testified that he prepared a narrative summary, which was provided to the defense, of information taken from the notes of the various officers who were involved in the investigation of the instant crime. Specifically, Blanton prepared the portion of the summary which dealt with the notes of Officers Towater and Acuff concerning their interview with Ed Bendowski. (V, 174-175, 189). The officers' notes, which were not signed by Bendowski, do not reflect that Bendowski saw a strange car in the vicinity or that the black

man at the dumpster was wearing a pair of tennis shoes. (V, 194). Likewise, the narrative summary of the interview with Bendowski does not indicate that Bendowski could identify the black man he saw on the night in question. (V, 192).

Sgt. Marvin Spencer of the Jackson Police Department's CID recovered a spent bullet located near the hallway door which leads into the den of the rectory. The bullet had white paint on it which matched the paint of the damaged hallway door and the damaged den wall, and had a splinter on it from the door. (V, 200).

On cross-examination, Spencer testified that the coffee table which was found in the middle of the den appeared to be out of place. The flower pot which was lying on its side with dirt spilled out onto the table was seized for the purpose of examining it for fingerprints; Spencer did not believe that any fingerprints were lifted from the pot. (V, 203-04).

Spencer was present at the time the petitioner was arrested at the Hut Restaurant some two days after the commission of the crime. As Spencer recalled, four other officers were involved in arresting the petitioner, who made no attempt to flee. (V, 207, 209).

Sgt. Gary Randy Winbush of the Jackson Police Department was qualified as an expert in the field of fingerprint analysis. (V, 219). During the course of the investigation, Winbush obtained the petitioner's fingerprints on May 17, 1981. (V, 221). On the morning of May 15, Winbush processed the rectory in an attempt to locate any latent fingerprints which might have been left at the scene. In doing so, Winbush did not find any fingerprints belonging to the petitioner and he was unable to identify some of the fingerprints which were found. (V, 225, 227). However, Winbush discovered

impressions which appeared to have been made by gloved fingers on several pieces of the glass which had been broken out of the sliding glass door and on the sliding glass door itself. (V, 227-28).

In processing the cardboard box which was found in the parking lot of Watkins Tower, Winbush was unable to recover any latent fingerprints of value. He was also not able to determine whether the box had been handled by someone wearing gloves. (V, 228-30). Likewise, no latent fingerprints of value were discovered on the cardboard insert which was found in the box. (V, 230-31).

In processing the area around the rectory, Winbush made impressions of latent shoeprints. (V, 232). The shoeprints which were lifted appeared to match the plaster casts of the shoeprints which were found in the area. (V, 236-37).

On cross-examination, Winbush testified that he was unable to identify the one fingerprint which he lifted from State's Exhibit No. 3, the .38 caliber Smith & Wesson police revolver. In addition, his efforts to process the nickel and the penny which were found in the cardboard box were unsuccessful. (V, 253). In Winbush's opinion, the rectory did not appear to have been wiped clean of fingerprints. (V, 244). To his knowledge, only Sgt. Spencer wore gloves during the time the rectory was processed for evidence. (V, 245-56).

Winbush further testified that he identified the petitioner's fingerprint on a radio which had been seized from the petitioner's motel room. (V, 225, 252). Winbush, who noticed what appeared to be three different tread patterns on the footprints which he had lifted from the carport at the rectory, was never asked to compare the footprints with a pair of shoes. (V, 251).

Mary Timby, a parishioner of St. Mary's Church, testified that Father Jackson ate dinner at her home on the evening of May 14, 1981. Father Jackson arrived sometime between 6:00 p.m. and 6:30 p.m., with dinner being served between 6:30 p.m. and 7:30 p.m. During the course of the evening, the deceased drank one glass of wine and ate lambchops, potatoes, and green beans. (V, 258). The priest left between 8:00 p.m. and 8:10 p.m., with the rectory being a three minute walk from the Timby resident. (V, 258-59).

By stipulation, proof was admitted that Father Jackson was declared dead at the rectory and was the same person who was examined by Doctors Ballard and Harlan. (V, 261).

Charles Warren Harlan, the forensic pathologist who performed the autopsy on Father Jackson on May 15, 1981, testified that death occurred as a result of a near gunshot wound to the back of his right shoulder. (V, 269-70). From the appearances of this wound, the tip of the muzzle of the gun was held three to five inches away from the surface of the skin at the time the gun was fired. (V, 276). The bullet which caused the deceased's death, State's Exhibit No. 26, was recovered from the body. (V, 270, 279-80).

Harlan determined that Father Jackson was shot a second time in the left shoulder by a bullet which exited the body. (V, 270, 277). This wound was caused by a gun fired zero to eight inches from the skin surface. (V, 277). Harlan was unable to determine which of the gunshot wounds was inflicted first or the position of the priest at the time he was shot. (V, 271, 275).

Upon further examination of the body, Harlan discovered a laceration to the right forehead and on

the top of the back of the head. (V, 271-72). In his opinion, some sort of hard object caused these lacerations, and the lacerations were consistent with having been caused by the .38 caliber Smith & Wesson police revolver. (V, 273).

Harlan also located multiple abrasions on the right forearm which he characterized as defensive wounds. Other abrasions were found on both knees. Based upon the lacerations and the bruises on the body, it was Harlan's medical opinion that the wounds had been inflicted upon the deceased during a struggle. (V, 273-74).

As a result of the autopsy, Harlan was able to determine that Father Jackson had consumed for his last meal green beans, baked potatoes, meat, and an alcoholic beverage. (V, 281). With other testimony indicating that the deceased had consumed green beans, potatoes, lambchops and one glass of wine between 6:30 p.m. and 7:30 p.m. on the evening of his death, Harlan determined that the time of death was 8:00 p.m. to 8:30 p.m. on May 14, 1981. (V, 284).

On cross-examination, Harlan stated that the lacerations to the right forehead and the top back of the victim's head could have been caused by a hard object of any type and could have occurred during a fall. However, it was Harlan's opinion that the lacerations were more liekly caused by a gun, considering the shape of the lacerations and the fact that the victim suffered gunshot wounds. (V, 291-92). Harlan also stated that he was not asked to, and did not, take any hair samples from Father Jackson. (V, 289-90).

On re-direct examination, Harlan testified that the blows to the forehead and top of the head could not have been caused by a single fall. (V, 293).

Sgt. Charles Boswell of the Memphis Police Department came to Jackson on May 16, 1981, in an attempt to locate the police revolver which was missing. (V, 298). In an effort to recover the weapon, he came into contact with an Evan Chapman, who identified the petitioner's photograph from a total of six photographs. (V, 299-300). Boswell further testified that he did not know when the photograph of the petitioner was taken. (VI, 301).

Evan Chapman, the owner and manager of Chap's Market and Cafe in Jackson, testified that on the night of May 15, 1981, he returned to the cafe in response to a telephone conversation he had with one of his employees, Charlie Harris. Arriving at the cafe around 10:00 p.m., Chapman spoke with the petitioner, who was wearing blue jeans, a short jacket and tennis shoes, concerning a pistol which the petitioner wanted to sell. The petitioner, who was not asked to, and who did not, give his name, indicated that he had acquired the pistol as a security guard in California and that he wanted to sell the pistol because he needed the money. (VI, 308, 312). The petitioner wanted $60.00 to $70.00 for the gun, which was worth $200.00 to $300.00 or more on the open market. (VI, 308-09). Chapman gave the petitioner $30.00, telling him that he would pay the remainder the following week if the gun as determined to be "clean." (VI, 308-10). In addition to selling Chapman the unloaded gun, the petitioner gave him four rounds of ammunition. (VI, 312-13).

On the morning of May 16, Chapman contacted Captain Cherry of the Jackson Police Department to have the gun checked out. (VI, 310-11). Some time after giving the gun and the ammunition to Cherry, Chapman identified the petitioner from a total of six photographs. (VI, 305, 311).

On cross-examination, Chapman testified that at the time he purchased the gun from the petitioner, his office was lighted by a desk light. (VI, 316). Chapman sat at his desk, with the petitioner seated in a chair positioned at the end of the desk. (VI, 317). During the transaction, they were not interrupted by anyone coming into the office. (VI, 317).

The petitioner, whose dress was not unusual for the type of customers who frequent the cafe, wore his long hair in a new style and needed a shave. (VI, 319-20). The petitioner was also wearing some sort of a little hat. (VI, 319).

Chapman further testified that he made it absolutely clear to the petitioner that he was going to have the gun checked out. The petitioner understood this and did not appear upset at the idea. (VI, 318). Chapman also admitted that although he does not have a license to deal in firearms, he purchased the gun because he thought he could make some money off of it. (VI, 322-23).

Captain James M. Cherry, Jr., a captain with the Jackson Police Department, testified that he obtained the gun and four live rounds of ammunition from Chapman at noon on May 16, 1981. After giving Chapman a receipt, he turned the gun and the ammunition over to Investigator Blanton. (VI, 324-25).

On cross-examination, Cherry stated that he was notified about the gun by way of a telephone call from Refolder Hennings, who made the call for Chapman. (VI, 326).

M. L. "Rocky" Acuff, an investigator with the Jackson Police Department, testified that he and three other officers arrested the petitioner around breakfast time on the morning of May 17 at the Hut

Restaurant, which is approximately a ten-minute walk from the Regency Inn. (VI, 330-31). After having received information that the petitioner was staying at the Regency Inn, Acuff removed a radio from the room occupied by the petitioner. He was unable to determine the ownership of the radio. (VI, 331-32).

On cross-examination, Acuff testified that at the time of the petitioner's arrest, the petitioner was not armed and did not resist or attempt to flee. To the best of Acuff's recollection, none of the arresting officers were in uniform. (VI, 339-40).

Prior to the petitioner's arrest, the police had conducted a surveillance of the Regency Inn. (VI, 341). At the time the motel room which was occupied by the petitioner was searched, a black female was removed; she was not interrogated or interviewed by Acuff. (VI, 342). According to Acuff, the only item taken from the petitioner's room was a radio which was apparently determined not to have been stolen. To the best of Acuff's knowledge, the only fingerprints discovered during the investigation which were the petitioner's were found on this radio. (VI, 343). Acuff further stated that no information was received during the investigation to indicate that the petitioner had a vehicle at his disposal or in his possession. (VI, 341).

Acuff further testified that he and Sgt. Towater spoke with Ed Bendowski on the day the priest's body was found. In describing the man he saw at the dumpster on the preceeding evening, Bendowski described a black male, approximately 5' 10" to 6' tall, wearing a blue windbreaker and dark trousers. Aruff did not recall Bendowski (who had earlier spoken with Sgt. Towater in the absence of the witness) indicate that he could identify the man he saw at the dumpster. Likewise,

Acuff did not recall that Bendowski said anything about a pair of white tennis shoes. (VI, 346-50). According to Acuff, the notes he made of the interview with Bendowski constitute a true and accurate statement of the information provided by Bendowski. (VI, 352).

Acuff also testified that he was familiar with the residential makeup of the area surrounding St. Mary's Manor. Some one to two thousand yards from the manor is an area of low income housing in which several black families live. (VI, 357-58). Apparently, there is an access road which leads from the manor to this housing area. (VI, 358-59).

Lieutenant Barney Wright of the Memphis Police Department conducted a tentative comparison of the bullet which was found at the rectory, the bullet which was recovered from Father Jackson's body, and a test fire bullet. (VI, 360-63). As a result of this examination, Wright determined that the bullets, which were for a gun of the same make and model, could have possibly been fired from the same weapon. (VI, 364, 367-68).

Thomas K. Ballard, the Madison County Medical Examiner, testified that he arrived at St. Mary's Rectory at 8:55 a.m. on the morning of May 15, 1981. (VI, 372). Ballard, who was personally acquainted with Father Jackson, pronounced the priest dead at the scene (VI, 372).

Upon examining the body at the hospital, Ballard determined that the cause of death was a gunshot wound to the right upper back which penetrated Father Jackson's back, esophagus, and heart. He also observed a second gunshot wound to the left back. (VI, 373-74). Ballard characterized both of these gunshot wounds as "near" wounds. (VI, 377).

In addition to the gunshot wounds, Ballard discovered a laceration to the right scalp which could

have been caused by a fall or by the deceased having been struck with a blunt object, such as the police revolver. (VI, 374-75). Another laceration was located on the top of the victim's head, which could also have been a result of a fall or a blow. (VI, 379). However, given the location of these lacerations, it would be difficult for Ballard to conclude that the lacerations were caused by a single fall. (VI, 379-80).

Fresh abrasions were found on the deceased's left upper arm, below the left elbow, the left wrist, the right lower leg, above the right heel and above the left heel. (VI, 378-80). An examination of the deceased's tongue indicated that Father Jackson had completely bitten through the distal end of his tongue during the death process or during a struggle. (VI, 377-78).

Ballard further testified that his medical findings and the appearance of the den in which the deceased was found indicated that a struggle had occurred. (VI, 381). According to Ballard, the abrasions and contusions on the deceased's arms and the lacerations on the deceased's head could be characterized as defensive wounds. (VI, 382). Ballard also stated that Father Jackson was 5' 6" tall and weight approximately 155 pounds. (VI, 384).

Sgt. R. L. Towater, an investigator with the Jackson Police Department, reported to St. Mary's Manor on the morning of May 15, 1981, for the purpose of canvassing the area for evidence and witnesses. As a result of speaking with Ed Bendowski, he went to the eighth floor of the manor and looked out the hallway window; below, he could clearly see the dumpster. (VI, 388-89).

Towater observed shoeprints around the dumpster which indicated that someone had been there recently.

The shoeprints traveled in the direction from the rear of the manor walking south to north, then made an entire circle around the dumpster, and headed in an easterly direction toward Highway 45 Bypass. (VI, 390).

Towater identified the lining of a cardboard box which was found at the southeast corner of the dumpster between the dumpster and the manor. (VI, 387). According to information received from Bendowski, it was this lining which had been discarded by the black male he had observed at the dumpster the previous evening. (VI, 386).

On cross-examination, Towater testified that the hallway window on the eighth floor has a light tint to it. Although the tint did not hamper his ability to see out of the window during the daytime, Towater did not ascertain what effect the tint would have at night. (VI, 391-93).

During Towater's conversation with Bendowski, Bendowski stated that the suspect at the dumpster wore dark colored shoes; Bendowski did not relate that the suspect were tennis shoes. Bendowski also stated that the suspect wore a light blue jacket and a light colored hat, with a snap bill, that matched the jacket. (VI, 397). Although Towater did not recall Bendowski indicating that he was able to identify the man at the dumpster, Towater was unable to state that Bendowski did not, in fact, tell him this. (VI, 394-95).

Patrick Garland, a Senior Firearm Examiner with the TBI Crime Laboratory, compared the bullet which was found at the rectory, the bullet which was recovered from Father Jackson's body, four test fire bullets, and the police revolver. As a result of this comparison, Garland determined that the bullet which was found at the scene of the crime and the bullet which was recovered

from Father Jackson's body had been fired from the police revolver. (VI, 419-20).

On cross-examination, Garland stated that to the best of his knowledge, he has never made a mistake in matching a test bullet to a suspect bullet in determining whether the bullets were fired from the same weapon. (VI, 422-23). In Garland's opinion, the field of firearms examination is as exact a science as mathematics. (VI, 426). Garland also stated that the damage to the bullet found at the scene and the bullet taken from the body did not affect his ability to determine that the bullets had been fired from the police revolver. (VI, 432).

On re-direct examination, Garland testified that the bullet which was recovered from the rectory was examined by Serologist Beganney in his presence; the results of the serology test were negative. (VI, 434).

Sgt. Harrell C. Carter of the Jackson Police Department obtained all of the clothing that Father Jackson wore at the time of his death. This clothing included the victim's shirt, trousers, and shoes. (VI, 437-39).

Captain Robert Daley, the officer in charge of the Jackson Police Department's CID, was present at the Calvary Cemetary in Memphis, Tennessee, on November 16, 1981, at which time Father Jackson's body was exhumed. (VI, 444). Acting pursuant to an order of the court, he removed hair from five places on the victim's head, placing the hairs in individual envelopes. The hair was removed from the right center, top center, back, right side, and left side of the victim's head. (VI, 444, 446).

By stipulation, it was admitted that the body which was exhumed was that of the victim and that the

hair samples which were recovered had been taken from the victim. (VI, 445).

On cross-examination, Daley testified that Father Jackson was buried around May 16, 1981, with the grave being opened the following November 16. (VI, 447). The length of time which transpired between the crime and the exhumation of the body was occasioned by the fact that although there had been a comparison of hair found on the victim's clothing and on the petitioner's clothing, it was necessary to establish that the hair found on the victim's clothing actually came from the victim. (VI, 448). Immediately upon receiving information from the FBI concerning the initial hair analysis, steps were initiated to obtain a court order to permit the exhumation of Father Jackson's body. After obtaining the hair samples from the body, the FBI was able to undertake a second hair analysis within a couple of days. (VI, 448).

Sister Mary Ann Guthrie, an administrative assistant to the Catholic Diocese of Memphis, was personally acquainted with Father Jackson. She saw the victim in death on May 15, was present at the time the victim was entombed at the Calvary Cemetary, and was present at the time the body was exhumed. Sister Guthrie further testified that she personally observed Captain Daley remove certain hair samples from the exhumed body which was, in fact, Father Jackson's body. (VI, 451-52).

Lieutenant Richard Higgins of the Jackson Police Department was in charge of the instant investigation. Arriving at St. Mary's Rectory at 8:30 a.m. on the morning of May 15, 1981, he examined the scene and noticed a coin on the floor of the hallway leading from the rear of the rectory into the den where Father Jackson's body was discovered. Higgins noticed another

coin on the floor of the den next to the door leading into the hallway. (VII, 458).

On the day of the petitioner's arrest, he obtained a blue denim windbreaker jacket and a pair of denim Levis from the petitioner. The petitioner's clothing and the victim's clothing were sent to the FBI Crime Laboratory for analysis. (VII, 461-65).

On cross-examination, Higgins testified that the petitioner was wearing a pair of tennis shoes at the time of his arrest. Higgins made no effort to compare the petitioner's tennis shoes with the shoeprints which were found at and around the scene of the crime because it was obvious that the tread of the petitioner's shoes and the shoeprints did not match. (VII, 469-70).

Higgins further testified that three of the four officers who arrested the petitioner were Caucasian. Following the petitioner's arrest, the petitioner came into contact with several Caucasian persons during the course of being fingerprinted and photographed. However, the only Caucasian hair samples which were sent to the FBI Crime Laboratory were those recovered from Father Jackson's body. (VII, 479-82).

Higgins stated that to his knowledge, no clothing was removed from the petitioner's room at the Regency Inn at the time it was searched. (VII, 484). He also stated that other than Sgt. Spencer, no other officer at the crime scene wore gloves during the investigation. (VII, 472-73). In addition, the investigation into the murder of Father Jackson did not uncover what might have been stolen from the rectory which would have required a large box to remove it from the scene. (VII, 489). According to Higgins, it appeared that the cardboard lining which was found near the dumpster belonged to the cardboard box which was found in the parking lot

of Watkins Tower. With the lining removed from the box, the box was capable of holding a greater amount of matter. (VII, 489-90).

Higgins also testified that the area around Preston Street and the Carousel Lounge is generally known to be a black area of Jackson. A lot of blacks also live in the low-income housing located to the west of St. Mary's Rectory. (VII, 488-89).

On re-direct examination, Higgins testified that he inserted the cardboard lining into the cardboard box and it fit. (VII, 492).

Following a jury-out hearing, Special Agent Mike P. Malone of the FBI was declared to be an expert witness in hair and fiber analysis. (VII, 503-16). After detailing his professional qualifications before the jury, Malone described the process which is used to examine hair and explained that it is possible to determine through analysis whether the hair is animal or human; whether it is Negroid, Caucasion, Mongoloid, or a mixed race; whether it was removed forcibly, shed naturally, or cut with scissors; whether it was subject to artificial treatment, such as bleaching, dying, or a permanent; whether it is diseased; and what area of the body it came from. (VII, 534-35). In normal hair, it is possible to find approximately 20 individual characteristics, but at least 15 individual characteristics must be found in order to use the hair for comparison. (VII, 537-38). However, Malone stressed that hair analysis does not provide positive personal identification, such as fingerprint analysis, because hair is not unique enough to determine that it came from one person to the exclusion of all others. (VII, 538).

During Malone's seven years of experience, he has performed approximately 10,000 individual hair

examinations. Over that period of time, Malone encountered only two occasions where the head hairs from two different people were so similar as to preclude an identification. (VII, 555). As a result of his experience, Malone stated that it is highly unlikely that the hair from any two persons will exhibit exactly the same characteristics. (VII, 539). However, if the hair from two individuals matches, both individuals must have been in the same place where the hair was found. (VII, 539-40).

Prior to receiving a known sample of the victim's hair, Malone compared several brown Caucasian head hairs which were found on the victim's shirt with one brown Caucasion head hair which was found on the petitioner's windbreaker. This examination revealed that the hairs exhibited exactly the same individual microscopic characteristics. In Malone's opinion, the hairs were indistinguishable and probably originated from a common source. (VII, 529-31).

After receiving the known hair sample from Father Jackson's head, Malone compared the hair removed from the victim's shirt and the hair found on the petitioner's jacket. Malone stated that the hairs were indistinguishable, having the same 20 individual microscopic characteristics. In Malone's opinion, these hairs could definitely have come from the same individual. (VII, 540-42). Malone also stated that if another person exists who has hair exactly like Father Jackson's, that person would have to have been in a position where his/her hair could have been deposited on both the victim's shirt and the petitioner's jacket. (VII, 542).

Malone further testified that the hair which was found in Father Jackson's shirt had been removed from his head as a result of the normal shedding process. The hair which was recovered from the petitioner's jacket

had been forcibly removed from the individual to whom it belonged. The forcible removal of this hair was consistent with an injury caused by a blunt instrument to the head of this individual. (VII, 554).

Malone also stated that if the petitioner's jacket had come into contact with other Caucasian persons, such as those persons brushing up against the petitioner, the hair which might be deposited on the petitioner's jacket would normally be hair which had been shed as a result of the normal growth cycle. (VII, 546). According to Malone, it is much more unlikely to find hair which has been forcibly removed than to find hair which has come out naturally. (VII, 545).

On cross-examination, Malone testified that the hair which was found on the victim's shirt was definitely head hair. This hair was two and one-half inches in length; whereas, the hair which was found on the petitioner's jacket was two and one-quarter inches in length. (VII, 548-49). During his examination of Father Jackson's clothing, he did not find any Negroid hairs. (VII, 554).

Malone also stated that the field of hair analysis definitely constitutes an exact science. (VII, 553). Due to the necessity of having to return hair samples to the contributor, Malone had not effected a cross-match of the 10,000 hair samples which he has examined during the past seven years. (VII, 552).

Malone repeated that hair analysis does not constitute a positive personal method of identification, although it is highly unlikely that the hair from two individuals will exhibit the same characteristics. (VII, 551). Malone admitted that if he finds two hair samples which match perfectly, he cannot positively determine that the samples originated from a common source. (VII, 554).

Roderick Elmore, an inmate of the Memphis County Jail awaiting trial on a charge of armed robbery, came into contact with the petitioner when they were both incarcerated in June of 1981. (VII, 557-58). At that time, Elmore overheard portions of a conversation which occurred between the petitioner and an unnamed individual. During the course of this conversation, the petitioner stated that he had gone through Jackson and that he had gotten to Jackson by way of his girlfriend. The petitioner also stated that he was on the grounds of the rectory and that he had sold a pistol to someone in Jackson. (VII, 559-61). Elmore, who could not hear the entire conversation, did not hear the petitioner say what time he was at the rectory; whether anything happened to him at the rectory; whether he came into contact with anyone at the rectory; or whether he obtained anything of value while he was at the rectory. (VII, 560-61).

On cross-examination, Elmore testified that he had previously been arrested on a charge of first degree burglary. He did not make any deals with the prosecution in Memphis or in Jackson in exchange for his testimony at the instant trial. (VII, 562, 566).

Elmore also identified a written, signed statement which he made to officers of the Memphis Police Department concerning his knowledge of the instant case. (VII, 566-68). According to Elmore, although he could not see the petitioner at the time the conversation ocurred, he was positive that it was the petitioner's voice which he heard. (VII, 563-64).

Lieutenant Bobby Holt, an investigator with the Jackson Police Department, participated in the arrest of the petitioner at approximately 8:00 a.m. on May 17, 1981, at the Hut Restaurant. (VII, 570-71). The petitioner was taken into custody without incident. (VII, 573).

After having been advised of his constitutional rights, the petitioner executed a written waiver of his constitutional rights and gave an oral statement which was recorded. The petitioner's oral statement was reduced to typewritten form and a redacted version of the statement was read into the record. In his statement, the petitioner stated that he came to Jackson from Memphis with a man named T-Bone and T-Bone's friends some time after 11:00 p.m. on May 12, 1981. They drove to the Regency Inn, where T-Bone registered for him under the name of "Louise." The petitioner himself did not register because he was without identification. The petitioner, who gave T-Bone around $59.00 to pay for the rent on the room for one week, checked into Room 20 something. After the petitioner checked into his room, the other individuals returned to Memphis and the petitioner went to sleep. (VII, 580-86).

The following morning, a Wednesday, the petitioner called a friend of his named Robert and Robert's sister, Jenny, to come and pick him up at the motel because he did not know his way around Jackson. The petitioner then played basketball behind someone's house which was located a few blocks from Jenny's house. After playing basketball, he returned to the motel around 8:00 p.m. and stayed there alone all night, watching television and listening to the radio. (VII, 588-89).

On Thursday morning, the petitioner took a cab to Jenny's house on Preston Street because he was unable to contact anyone to give him a ride. After drinking for a while, he played basketball with some

p.m. or 10:00 p.m., took a cab to his motel. The petitioner did not know what time he arrived at his motel, but it was late and he was drunk. The petitioner then went to sleep and stayed in his room until the next morning around 6:00 a.m. or 7:00 a.m. (VII, 589-93).

On Friday morning, the petitioner took a cab and went to Jenny's house. As he was returned to his motel by cab, he passed a club and stopped. At the club, he met a young lady around 9:00 p.m., 10:00 p.m., or 11:00 p.m. The petitioner left the club around midnight, returning to the motel after getting a ride with a John or Johnson who drove a white and lavender Monte Carlo or Grand Prix. According to the petitioner, "we" watched television for a while and he then went to sleep. (VII, 593-96).

The petitioner awoke around 8:00 a.m. or 9:30 a.m. on Saturday morning. After helping the maid clean his room, he went across the street and ate at the Kentucky Fried Chicken. He then returned to the motel. When the maid got off work around 3:00 p.m., he went to her house and stayed the night. He returned to the motel with the maid on Sunday morning, as she had to go to work. (VII, 596-98).

In his statement, the petitioner denied that he had any knowledge of the instant crime. The petitioner stated that he did not know the location of the rectory and has never had in his possession a police revolver. (VII, 601-02). The petitioner also stated that the

The petitioner stated that he purchased the tennis shoes which he was wearing at the time of his arrest at some store in downtown Memphis on May 11. (VII, 600, 602). According to the petitioner, the hat which he was wearing when he was arrested belonged to his friend, Robert. The petitioner stated that he himself owned a blue jean hat. (VII, 600). Finally, the petitioner stated that the money which he used during this period came from the sale of some of his clothes and constituted money he already had. (VII, 599).

On cross-examination, Holt stated that the petitoner made this statement prior to being processed or fingerprinted. The petitioner's clothes were taken from him prior to the statement, and the petitioner was given other clothes to put on. (VIII, 605). Also prior to giving his statement, the petitioner made a telephone call. (VIII, 606).

B. The Petitioner's Proof

Howard Anthony Williams testified that he met the petitioner, whose nickname was "Chinaman," at the Preston Street home of his girlfriend, Jenny Pirtle. (VIII, 613). Williams stated that it was around 4:00 p.m. when he met the petitioner, and he believed that it was on the Thursday prior to the time Father Jackson was murdered. (VIII, 614-15).

Between 6:00 p.m. and 6:30 p.m., Williams and the petitioner walked to the Carousel Club, which was closed at that time. For about ten minutes, they sat in Pop-Eye's Restaurant next door until the club

(VIII, 615, 639-36). The petitioner and Williams

With the exception of [illegible] minutes when

Williams [illegible] Chat's Place. (VIII,

620-21).

After leaving the Carousel Club around 8:00 p.m., they took a cab to Chat's Place, arriving shortly after 8:30 p.m. The petitioner and Williams remained at Chat's Place, drinking and playing pool, until 10:30 p.m. At that time, Williams and Jenny (who had joined them) left and went to her house. (VIII, 625-26). Around midnight, the petitioner arrived at Jenny's house and attempted to contact a young lady by telephone. (VIII, 627-28). The petitioner remained with Williams and Jenny for approximately one hour, after which Williams did not see the petitioner again. (VIII, 629).

According to Williams, the petitioner's physical appearance on the night in question did not appear unusual. (VIII, 628-29). Williams also stated that the petitioner was not a personal friend, but was simply someone he met one day. (VIII, 631).

On cross-examination, Williams stated that he did not know a Madley Graves and did not have a conversation with him on Thursday. Williams then stated that he did know Madley, but did not see him at any time on the day in question. (VIII, 631-32). First stating that he could not recall if Madley was at Chat's Place, Williams then stated that Madley was there. (VIII, 640-41). Upon being questioned as to whether anyone asked him after he got to Chat's Place how he had gotten there, Williams initially stated that Madley did. Williams then stated that it was not Madley who asked him the question, but rather was Jenny. Williams then admitted that he and Madley engaged in a conversation regarding

Williams denied that his nickname was Hambone. Williams also stated that he had no idea why the petitioner in his statement initially said that he had stayed at Jenny's house after playing basketball until 7:00 p.m. and then changed his statement to say that he and a Hambone went to a chicken place on Thursday afternoon around 4:00 p.m. According to Williams, he did not know why the petitioner did not say that he was with him. (VIII, 645-46). Williams also did not know why the petitioner stated that after he finished playing basketball with Hambone, he remained at Jenny's house until 10:00 p.m., instead of telling the police that he was with Williams. (VIII, 647).

Charlie Lee Harris, who was employed at Chat's Place at the time of the crime, testified that he saw the petitioner in Chat's Place between 8:00 p.m. and 9:00 p.m. on Thursday night. He remembered the petitioner because an altercation arose between the petitioner and the late Michael Love over a pool game. Apparently, Love was interferring with the petitioner's game and was kicked out of the club as a result. (VIII, 654).

Harris further testified that he saw the petitioner in Chat's Place on Friday night. At that time, the petitioner was talking to Mr. Chapman. (VIII, 655).

On cross-examination, Harris stated tht he was not positive of the exact time that he saw the petitioner on Thursday night. According to Harris, it could have been later than 9:00 p.m. (VIII, 657).

During the conversation concerning the gun, the petitioner did not introduce himself by name to Harris. (VIII, 659). The first time that Harris saw the gun, it was in the possession of the petitioner. After Harris examined the gun, he gave it back to the petitioner. (VIII, 659-61).

When Chapman arrived at his place of business, Harris directed the defendant to him. After the petitioner told Chapman that he wanted $60.00 for the gun, Chapman and the petitioner immediately went into Chapman's office. The petitioner remained in the office for a short period of time; Harris did not question Chapman concerning what had occurred in the office. However, Chapman showed him the gun which was the same gun the petitioner had in his possession. According to Chapman, State's Exhibit No. 3, the .38 caliber Smith & Wesson police revolver, looks exactly like the gun in question. (VIII, 663).

On re-direct examination, Harris testified that the petitioner stayed at the club for a record party after he had met with Chapman. The petitioner, who paid the club's cover charge, also paid the cover charge for several other persons. (VIII, 664). During the record party, the petitioner did not appear to be nervous, but was dancing and having fun like the other patrons. (VIII, 664).

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Although he did not talk to the petitioner, Cannon spoke with Madley outside the club. As a result of their conversation, Cannon got Madley's car and drove the petitioner to his motel around midnight. (VIIII, 669-70). At the motel, Cannon waited a few minutes outside in the car while the petitioner changed his clothing. They then drove to the Pirtle residence and stayed outside in the car, talking. (VIII, 671-72). Within 10 minutes after having left the Cafe, the petitioner and Cannon drove to Cannon's house on Hunt Street where they parked in front of the house. (VIII, 673-74). The petitioner wanted to party, but Cannon told him that there was no gas in the car and that there was nowhere to go. Thereupon, Cannon went into his house and the petitioner walked away in the direction toward the Pirtle residence. (VIII, 674-75).

Cannon testified that he next saw the petitioner late Friday evening. He had no further contact with the petitioner, who was not a friend of his. (VIII, 675-76).

On cross-examination, Cannon admitted that he had no idea where the petitioner was prior to the time that he saw the petitioner around midnight on Thursday. Cannon also stated that when he drove the petitioner to his motel room, the petitioner came out of the room with a bundle of what appeared to be clothing. (VIII, 677).

convicted of second degree murder in the Criminal Court of Davidson County on January 4, 1979, receiving a sentence of ten years, and that the petitioner was convicted of first degree murder in the Circuit Court of Shelby County on November 6, 1981, receiving a sentence of death. (IX, 706).

B. The Petitioner's Proof

The petitioner presented no proof.

the direct appeal to the Supreme Court of Tennessee, the petitioner preserved his complaint concerning the denial of the motion by the trial court.

At trial, the petitioner failed to contemporaneously object to the admission of the prior judgment of conviction finding the petitioner guilty of first degree murder, and the petitioner failed to contemporaneously object to the district attorney general's closing argument. In addition to the judgment of conviction being admitted without objection on the part of the petitioner, the petitioner did not move to redact the judgment to omit its reference to the prior death sentence. Rather, the judgment of conviction was admitted by agreement of the petitioner and the respondent. (IX, 798).

In his motion for a new trial, the petitioner failed to preserve all but one of his complaints concerning the sentencing phase of the trial. This complaint was predicated upon the allegation that the district attorney general improperly commented upon the fact that the petitioner "had been given the electric chair as the result of his conviction on a murder charge in Memphis, Tennessee." (I, 29). On direct appeal to the Supreme Court of Tennessee, the petitioner raised the same complaints he presents here concerning the sentencing phase of the trial.

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guilty of first degree murder and first degree burglary, and fixing the petitioner's punishment at death on the first degree murder conviction and not less than ten (10) years, nor more than fifteen (15) years incarceration on the first degree burglary conviction.

The Supreme Court of Tennessee did not decide a federal question of substance not heretofore determined by this Court or decide such a question in a way not in accord with the applicable decisions of this Court, another state court of last resort, or a federal court of appeals. See Supreme Court Rule 19(1)(a). There being no special and important reasons for a grant of certiorari in this case, the Court in its sound judicial discretion should deny the writ sought here.

I. THE SUPREME COURT OF TENNESSEE FULLY CONSIDERED AND CORRECTLY REJECTED THE PETITIONER'S CONTENTION THAT THE TRIAL COURT ERRED IN DENYING HIS MOTION FOR FUNDS TO SECURE THE ASSISTANCE OF AN EXPERT IN THE FIELD OF HAIR ANALYSIS.

The petitioner contends that his Sixth Amendment right to the effective assistance of counsel was abridged by the action of the trial court in denying his motion for funds to secure the assistance of an expert in the field of hair analysis. The respondent respectfully submits that the petitioner's right to the effective assistance of counsel was not violated by the trial court's ruling and that, absent some statutory authorization under state law, the trial court properly determined

> Essentially this is a matter that addresses itself to the judgment and discretion of the legislature. Thus far it has not seen fit to provide such services to indigent defendants.

Id. at 536. See also Collins v. State, 507 S.W.2d 179 (Tenn. Crim. App. 1973).

In the instant case, the Supreme Court of Tennessee, in reliance upon Baldi and Graham, found the petitioner's contention to be without merit under both federal and state law:

> The Defendant contends his Sixth Amendment right to effective assistance of counsel was abridged by the trial court's denying his motion for funds to secure the assistance of an expert in the field of hair analysis. The United States Supreme Court, in United States ex rel. Smith v. Baldi, 344 U.S. 561, 73 S. Ct. 391, 97 L.Ed. 549 (1953), held that a state is under no federal constitutional obligation to provide expert pre-trial assistance to an indigent defendant. The defendant, in Baldi, requested that the trial court

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[2]The petitioner presented a motion for funds to secure the assistance of an expert witness some five (5) days prior to the date set for trial. In denying the petitioner's motion, the trial judge declined to continue the case for an indefinite period, where the petitioner had not obtained an independent hair analysis expert and did not even know if such an expert existed. (III, 12-13). However, the trial court granted leave to the petitioner to renew his motion should the petitioner have obtained an expert within a period of time so as to not delay the trial. (III, 13). The record does not indicate that the petitioner ever renewed his motion.

> 547 S.W.2d 531 (Tenn. 1977). The Defendant points to, and our research turns up, no statute which would grant an indigent criminal defendant a right to this assistance. Although the Defendant "urge[s] this Court to adopt a rule of law allowing an indigent defendant funds for expert assistance," we decline to do so. "Essentially this is a matter that addresses itself to the judgment and discretion of the legislature. Thus far it has not seen fit to provide such services to indigent defendants." Graham, 547 S.W.2d at 536.

State v. Williams, 657 S.W.2d 405, 411 (Tenn. 1983).

The respondent asserts that the Supreme Court of Tennessee reached the correct conclusion both under prevailing case law and under the facts of the case. Not only was the petitioner not entitled to the services of an independent expert, but the petitioner has failed to demonstrate any prejudice resulting from the denial of funds with which to obtain an independent hair analysis expert, other than to imply a lack of knowledgeable ability to impeach the state's expert, FBI Agent Mike Malone. However, the record reveals that the petitioner extensively and effectively cross-examined Agent Malone at trial. Moreover, the petitioner has not established what benefit he might have received from another expert's findings, for he does not claim that Agent Malone was unqualified as an expert, improperly conducted the hair analysis, or erred in his findings.[3]

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[3]The record reveals that sometime prior to the trial court ordering the exhumation of Father Jackson's body, Agent Malone had compared brown Caucasian head hair found on the priest's shirt with brown Caucasian head hair found on the petitioner's jacket, and determined that the hairs were indistinguishable. The petitioner apparently does not claim that he was not timely notified of the results of this test, but only complains as to the two-week notice he received prior to trial of the analysis performed on the known hair sample from Father Jackson and the hair recovered from the petitioner's jacket.

With testimony from Agent Malone establishing that he could be reasonably expected to [illegible], (Vol. 5:3), with testing and certification [illegible] have reached a different conclusion, and with the defense having conducted an exemplary cross-examination of Agent Malone, the respondent insists that the trial court acted well within its discretion in refusing to grant the petitioner's motion for funds, particularly where the granting of the motion would have delayed the trial and particularly where the basis for the motion rested purely upon speculation. For these reasons, the petitioner is not entitled to a granting of his petition for a writ of certiorari.

The petitioner contends that the trial court erred in improperly monitoring the admission of evidence and the arguments of counsel at the punishment phase of the trial. According to the petitioner, the trial court erred in permitting the state to introduce into evidence that portion of a certified copy of a judgment of conviction which recited the sentence the petitioner received upon a prior conviction for first degree murder. The petitioner also contends that the district attorney general improperly commented upon the judgment of conviction and improperly referred to matters not in evidence during his closing argument. The respondent respectfully submits that the Supreme Court of Tennessee correctly found that no reversible error was committed at the sentencing hearing.

As indicated previously, the record reveals that the petitioner wholly failed to contemporaneously object to either the admission of the judgment of conviction or to the district attorney general's closing argument. In addition, the record shows that the judgment of conviction was not only admitted without objection on the part of the petitioner and without any defense motion to redact the judgment, but was actually admitted by agreement of the parties. (IX, 798).

In addition to failing to apprise the trial court of the instant complaints at the sentencing hearing, the petitioner failed to bring all but one of his complaints to the attention of the trial court in his motion for

In any event, despite the petitioner's failure to properly preserve his complaints in the trial court, the respondent asserts that the Supreme Court of Tennessee correctly determined that no reversable error was committed at the sentencing hearing. One of the aggravating circumstances relied upon by the state to establish that the petitioner merited capital punishment was that the petitioner had been previously convicted of one or more felonies which involved the use or threat of violence to the person. Tenn. Code Ann. § 39-2-203(i)(2). In order to show beyond a reasonable doubt the existence of this aggravating circumstance, the state was obviously required to prove that the petitioner had, in fact, been convicted. Under Rule 32(d) of the Tenn. R. Crim. P., a judgment of conviction must set forth "the plea, the verdict or findings, and the adjudication and sentence." (Emphasis supplied). Since a conviction of crime necessarily includes the imposition of a sentence, it was incumbent upon the state to establish as an element of the aggravating circumstance in question that the verdict of guilt previously rendered against the petitioner ac ually included the assessment of punishment.

The respondent further insists that the district attorney general, during closing argument, properly commented upon the sentence previously received by the petitioner.[4] Since the judgment of conviction was properly

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[4]Although the petitioner asserts that the record does not reflect that the judgment of conviction was passed to the jury, the judgment was clearly admitted into evidence and was thus subject to comment by counsel. (IX, 798).

The respondent additionally asserts that the district attorney general properly argued that the petitioner had been convicted of killing a police officer in the line of duty. (IX, 808-09). The judgment of conviction finding the petitioner guilty of first degree murder in the Circuit Court of Shelby County on November 6, 1981, recites the aggravating circumstances found by the jury in imposing the sentence of death: (1) the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another; (2) the murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement; and (3) the murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties. (Exhibit No. 2; IX, 868).

Quite clearly, the aggravating circumstances set forth above established that the petitioner murdered a police officer who was engaged in the performance of his official duties. The district attorney general's argument, being predicated on proof adduced at trial, was thus proper. State v. Sutton, supra; Russell v. State, supra.

> The first objection made about the impropriety of the State's arguments is made before this Court. Here, the Defendant objects to the state's mentioning the prior death sentence and to Mr. Woodall's phrase "blew his brains out." As there is no evidence in the record about the details of the killing of officer Cox, Mr. Woodall's comment was improper. See Russell v. State, 532 S.W. 2d 268 (Tenn. 1976). This error does not require a reversal of the Defendant's sentence, however, as he has shown no resulting prejudice. In a consideration of whether improper conduct on the part of the State requires reversal, a court may look to several factors, such as the effect of curative measures taken by the trial court, the intent of the prosecution, the cumulative effect of the improper conduct and any other errors in the case, and the relative strength of the case. See Judge v. State, 539 S.W.2d 340 (Tenn. Crim. App. 1976). Our review of the State's arguments convinces us that counsel were otherwise careful in their choice of words, considering the facts of this case are lamentable. The comment was isolated and Mr. Woodall's argument and Mr. Hymer's argument were in all other respects temperate.

State v. Williams, supra, 657 S.W.2d at 413.

Based upon the preceding argument, the respondent submits that it is clear that the petitioner waived any right to complain on appeal of the action of the trial court in monitoring the admission of evidence and the arguments of counsel at the punishment phase of the trial. In any event, the petitioner's complaints are without merit and could not possibly have resulted in reversible error. Accordingly, this Court should

deny the petitioner's petition for the writ of certiorari.

Respectfully submitted,

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AFFIDAVIT OF CERTIFICATE OF SERVICE

I, ROBERT A. GRIDLOW, being first duly sworn, make oath that I am a member of the Bar of the Supreme Court of the United States. I have previously entered by appearance as counsel of record in behalf of the respondent in this cause, the State of Tennessee.

I further certify that on this 27th day of January, 1984, I deposited ten (10) copies of the instant Brief in Opposition to Petition for Writ of Certiorari in a United States mailbox, with first-class postage prepaid, properly addressed to the Clerk of this Court and within the time allowed for filing; that I deposited one (1) copy of the instant Brief in Opposition to Petition for Writ of Certiorari in a United States mailbox, with first-class postage prepaid, properly addressed to the Honorable Lionel R. Barrett, Jr., P.C., Fifth Floor, 207 Third Avenue North Building, Nashville, Tennessee 37201, and within the time allowed for service.

I further certify that all parties required to be served have been served.

ROBERT A. GRIDLOW
Deputy Attorney General

Sworn and subscribed before me this 30th day of January, 1984.

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My Commission Expires:

July 18, 1987